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ENFORCEMENT OF U.S. PROHIBITIONS ON THE IMPORTATION OF GOODS PRODUCED BY CONVICT LABOR

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

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ENFORCEMENT OF U.S. PROHIBITIONS ON THE IMPORTATION OF GOODS PRODUCED BY CONVICT LABOR

TUESDAY, JULY 9, 1985

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m. in room SD-215, Dirksen Senate Office Building, Hon. John C. Danforth (chairman) presiding.

Present: Senators Danforth and Moynihan.

[The press releases announcing the hearing and the prepared statements of Senator William L. Armstrong and Senator Charles E. Grassley follow:]

[Press Release No. 85-041, Wednesday, June 12, 1985]

TRADE SUBCOMMITTEE SETS HEARING ON IMPORTS OF PRODUCTS MADE BY CONVICT LABOR

Senator Bob Packwood (R-Oregon), Chairman of the Senate Committee on Finance, announced today that the Committee's Subcommittee on International Trade has scheduled a hearing on the enforcement of U.S. prohibitions on the importation of goods produced by convict labor.

The hearing is scheduled to begin at 2 p.m., Tuesday June 25, 1985, in Room SD-215 of the Dirksen Senate Office Building. Senator John C. Danforth (R-Missouri), Chairman of the Subcommittee on International Trade, will preside.

Senator Danforth noted that many countries, including the United States, use convict labor in the production of goods. Most countries have cooperated to ensure that these products do not enter into trade with other countries, he said. The United States specifically prohibits such imports under 19 U.S.C. section 307. Because some countries with particularly harsh forced labor conditions are believed to be exporting goods produced by forced labor, the Committee requested an International Trade Commission study of the subject. The hearing will provide Members an opportunity to review the study, which was completed in December 1984.

[Press Release No. 85-051, Wednesday, July 3, 1985]

CONVICT LABOR HEARING ON JULY 9 TO BEGIN AT EARLIER TIME

The starting time for the Committee on Finance Subcommittee on International Trade's July 9, 1985, hearing on the enforcement of U.S. prohibitions on the importation of goods produced by convict labor has been advanced by 30 minutes, Committee Chairman Bob Packwood (R-Oregon) announced today.

The hearing, as reset, will begin at 1:30 p.m., Tuesday, July 9, in Room SD-215 of the Dirksen Senate Office Building in Washington.

Senator John C. Danforth (R-Missouri), Chairman of the Trade Subcommittee, will preside at the hearing.

ENFORCING THE BAN AGAINST THE IMPORTATION OF PRODUCTS MADE BY FORCED LABOR—STATEMENT BY SEN. WILLIAM L. ARMSTRONG

I thank Senator Danforth for scheduling this hearing on when the United States Department of Treasury and the United States Customs Service will enforce the existing law which requires banning the importation of products into the United States that have been made with Soviet forced labor.

It is disgraceful that this Administration is failing to enforce this law.

A 55-year old law states that:

"All Goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor . . . shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited."

It is this law and the Treasury Department's refusal to enforce this law that concerns us today.

I need not go into detail about the sheer brutality experienced by the estimated 4 million prisoners in 1,000-plus Soviet forced labor camps. These prisoners, of which more than 10,000 have been imprisoned simply for political reasons, toil under barbaric conditions. The State Department's "Country Reports on Human Rights Practices for 1984" states that conditions include strenuous physical labor, a semi-starvation diet, extreme cold, lack of medical care, beatings sometimes resulting in death, and arbitrary deprivation of prisoners' limited rights.

There is no doubt that these barbaric camps produce goods the Soviet Union exports. The United States Government has reported that these goods are imported into this country. By allowing the distribution and sale of forced labor made goods in this country, the United States has become a not-so-unwitting accomplice to Soviet tyranny. Cronid Lubarsky, a Soviet astronomer and former Gulag "graduate" states, "In one degree or another, the hand of a prisoner has touched everything that the West receives from the Soviet Union."

The issue of forced labor in the Soviet Union is not new to the Senate. Three years ago the Senate adopted S. Res 449 which requested a report on forced labor from the State Department. The preliminary report stated, "There is clear evidence the Soviet Union is using forced labor on a massive scale." And the final "Report to the Congress on Forced Labor in the USSR" found that forced labor is used "to produce large amounts of primary and manufactured goods for both domestic and Western export markets."

In May 1983, the CIA, at the request of Congress, compiled a list of over three dozen products made by Soviet forced labor for export, including chemicals, petroleum products, gold, uranium, aluminum, electronics, auto parts, clothing, tea, wood products and glassware. Based on this evidence, the Customs Service made a finding on September 28, 1983 that these items were or were likely to be imported into the United States and that they were made with forced labor.

It is important to understand the regulations enforcing the ban against these imports. Regulation 12.42 states that if the Commissioner of Customs finds—which he did on September 28—that information available to him reasonably indicates that suspect products are being imported, he will promptly advise all district directors accordingly and the district director shall thereupon withhold release of those products. Notifying the district directors and holding the merchandise are non-discretionary duties under federal regulation. Once this first stop is taken, the Customs Commissioner, with the approval of the Secretary of the Treasury, publishes the finding.

Unfortunately, the Treasury Department has not allowed this two step process to take place. Instead, it has prohibited Customs from carrying out the first step of holding the 36 products listed in Commissioner von Raab's original finding, thereby disregarding the existing regulations and prohibiting the Customs Service from implementing the law.

It should be pointed out that the only action needed to carry out the existing regulations is the issuance of a notice to the district directors authorizing them to hold the products listed in the Commissioner's finding.

Treasury's disregard of these regulations has triggered repeated steps by the House of Representatives, the Senate, and by individual Members of Congress to require the law to be enforced:

(1) The Senate unanimously passed a Sense of the Senate amendment urging the Treasury Secretary to use existing law to prevent the importation of products from the Soviet Union.

(2) The House passed a resolution condemning the use of forced labor in the Soviet Union by a vote of 402-0.

(3) 45 Senators signed a letter to the Treasury Secretary requesting enforcement of the law.

(4) 84 Members of the House signed a letter to the Director of the Customs Service asking that the law be enforced.

(5) Hearings were held in both the House and Senate by a number of Congressional Committees on Treasury intentions to abide by the law.

(6) A lawsuit was filed and is now pending by members of both Houses of Congress, the Washington Legal Foundation, the International Longshoremen's Association and others asking federal courts to direct the Treasury Department to enforce the law.

(7) A number of Congressional resolutions have been introduced urging immediate enforcement of the ban.

Yet Treasury has done nothing.

And now here we are once again holding hearings on the specific issue of whether the Treasury Department is going to enforce the law.

Why does Treasury refuse to enforce the law banning imports of goods made by forced labor? Here is what the Treasury Department has stated:

". . . available evidence provides no reasonable basis in fact to establish a nexus between Soviet forced labor practices, and specific imports from the Soviet Union. Consequently, based upon the evidence currently available to me, I have decided that there is no basis upon which to prohibit or withhold from importation into the United States any goods produced within the Soviet Union."

Mr. Regan based this conclusion on two factors. First, a letter from CIA Director William Casey in which he repudiates the earlier findings of the CIA. He states that "despite continued monitoring, we are unable to obtain sufficient facts to make a solid case that any particular good we receive from the USSR is produced by convict, forced or indentured labor." (Director Casey does confirm the CIA's earlier estimate that "3% of total Soviet labor is forced.") Second, Mr. Regan cites the findings of a "new" report written by the U.S. International Trade Commission.

Mr. Chairman, frankly, if these are the reasons why the Administration is not enforcing the law, they simply don't stand up under scrutiny. Here is why:

(1) Treasury does not need to determine which *specific* products being imported into the United States are made with forced labor. Customs Service *own* regulations state that if "*any class* of merchandise" is suspected of being made with forced labor, the district director shall inform the Customs Service Commissioner and if the Commissioner finds "at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be imported, he will . . . withhold release of any such merchandise" until a final determination is made. The burden of proof clearly lies with the importer. Should any question arise, the importer must certify the circumstances under which the product was made.

What could be more clear? The law forbids the importation of goods made with forced labor. Federal regulations state how the law should be implemented.

(2) Treasury asserts that "available evidence provides no reasonable basis in fact"—which is what the Treasury Department says it needs—to indicate which classes of Soviet products are being made with forced labor. This seems surprising in light of the following:

First, there is the 1983 CIA report identifying three dozen Soviet industries which used forced labor. Nothing in Director Casey's letter to Treasury substantively contradicts the CIA's 1983 finding.

Second, there is the September 1983 finding by the Customs Service that these products were made with forced labor.

Third, even after using much stricter evidentiary standards in determining what constitutes products made with forced labor, the Customs Service identified 5 classes of goods which it believed were made with forced labor—gold ores, agricultural machines, tractor generators, refined oil products and tea.

Fourth, there have been published reports in respected national publications documenting specific goods and classes of goods made with forced labor.

Fifth, former prisoners of Soviet forced labor camps have testified that many of the products of their labor are made for export and that these types of goods are reaching American markets.

Surely, enough evidence exists to conclusively state that the products on the Commissioner's original list meet the criteria of federal regulations. However, it should be pointed out that such a high standard is not even necessary to properly carry out the law. The regulation simply states that the Commissioner can make his finding "at any time that information available *reasonably but not conclusively* indicates that the merchandise" is made with forced labor. The Customs Commissioner clear-

ly met every criteria needed to enforce the law, but still the law is not being enforced.

(3) For the Treasury Department to decide not to enforce the law because of the findings of the ITC is simply an attempt to sidetrack the issue. The ITC report itself publicly states that it was merely a compilation of already available evidence from Customs, the CIA, and the Commerce and State Departments. In addition, even the ITC admits in its report that "The Commission did not have the resources to verify independently information provided by other government agencies." Yet, incredibly, the Treasury Department has used the report to avoid enforcing the law.

(4) In 1984, when the Treasury Department announced it was withholding a final decision about enforcing the law on forced labor pending completion of the ITC study the Treasury Department announced that it was releasing "evidentiary standards recently established by Treasury and Customs to assist in future determinations of whether any foreign made goods violates 19 USC 1307 (law banning importation of goods made by forced labor). These standards will be applied to information available to the Secretary regarding Soviet-made goods upon completion of the ITC study." Incredibly, even this minimal level of enforcement that the Treasury Department stated it would do is not now being implemented.

(5) Enforcing this law will not be setting a new precedent. In fact, in 1950, 15 Congressmen filed a petition similar to the one sent to Customs in May 1984 based on summary information from the CIA that canned crabmeat from the Soviet Union was allegedly being produced by Japanese prisoners of war. The Customs Service properly banned the importation of canned crabmeat from the Soviet Union from 1950 to 1961.

Presently, the Customs Service bans the importation of certain Mexican furniture, clothes hampers and palm leaf bags because of the use of forced labor in their production.

It seems incredible to me that the law exists, the regulations exist and the precedents exist for enforcing the ban against Soviet forced labor products, but here we are today still unable to get any action on the Customs Service findings.

At this point I would like to insert in the hearing record Commissioner von Raab's September 1983 findings and the evidentiary standards formulated by the Customs Service.

Congress has expressed its concern about the importation of goods made with forced labor strongly and repeatedly. It is now up to the Administration to either stand up for the principles of human freedom or once again attempt to thwart the law and continuing to act as accomplices to Soviet brutality.

Finding the answer to this question is the purpose of today's hearing. I trust Secretary Baker in his new position will tell us that Treaury is today taking the necessary steps to enforce the ban against the importation of goods made with Soviet forced labor.

I look forward to his testimony.

Enforcement of the Ban Against the Import of Goods Made With Forced Labor

CURRENT LAW AND REGULATIONS

Current law provides that all goods mined, produced or manufactured in any country in whole or in part by forced labor shall not be allowed entry into the United States. Regulations enforcing this law state that if the Commissioner of Customs finds at any time that information available to him reasonably but not conclusively indicates that goods being imported are made with forced labor, he will advise his personnel to hold the goods until an investigation is completed. Once his finding has been made, it is published in the appropriate federal documents, with the approval of the Secretary of the Treasury.

BACKGROUND

The State Department estimates that there currently are some 4 million individuals in more than a thousand forced labor camps in the Soviet Union. Of these, more than 10,000 are considered political prisoners or prisoners of conscience. Conditions are brutal—extreme cold, lack of clothing, beatings and torture sometimes resulting in death, a diet bordering on starvation, denial of even the most basic of privileges such as mail and visitation.

While the Smoot-Hawley Tariff Act of 1930 expressly prohibited the importation of goods made with forced labor, the Department of the Treasury has refused to

allow the Commissioner of Customs to enforce the law with respect to suspect goods coming in from the Soviet Union.

In September 1983, the Commissioner of Customs made a finding, that "on the basis of information reasonably available certain articles from the Soviet Union may be now, or are likely to be, imported into the United States, which are being produced . . . with the use of . . . forced labor." He based his finding on a CIA report identifying some 36 goods in which forced labor "is used extensively." Although not required to do so, the Commissioner notified the Secretary of the Treasury before issuing notification to his district directors to hold the goods. The Secretary of the Treasury, in turn, did not permit the Commissioner to carry out his duties under Treasury Department regulations.

Since that time, the Congress has made numerous attempts through hearings, resolutions, mark-up language, and finally a lawsuit to get the forced labor provision enforced. The Treasury Department has continued to thwart the law and the will of Congress on this issue for two years.

WHY THE PROHIBITION AGAINST GOODS MADE WITH FORCED LABOR SHOULD BE ENFORCED

(1) There is ample evidence from both the official and unofficial sources to indicate that many of the products being imported from the Soviet Union into the United States are being produced, at least in part, by forced labor. The State Department in its "Report to Congress of Forced Labor in the USSR (February 1983) stated that forced labor is used "to produce large amounts of primary and manufactured goods for both domestic and Western export markets." If further documented the fact that the USSR operates the largest forced labor system in the world, comprising some 1,100 forced labor camps, and that this system "gravely infringes internationally recognized fundamental human rights."

(2) In 1983, the CIA compiled a list of products and industries in the USSR in which forced labor is used "extensively." These include wood products such as lumber, furniture, wooden souvenirs and toys; cathode ray tube components and resistors; camera lenses, glassware and chandeliers; auto and agricultural machinery parts; and mined products, in particular gold, iron, coal, uranium, asbestos and limestone.

(3) Still, Treasury insists the "evidence" is not "specific" enough to determine which goods are being made with forced labor in the Soviet Union. It should be noted that current regulations do not require any such measure of specificity. They merely require "reasonable but not conclusive" information which indicates such merchandise "is being, or is likely to be" within the purview of current law.

(4) Enforcement of the prohibition will not set a new precedent. In fact, the United States banned the importation of Soviet crabmeat processed by Japanese prisoners of war between 1951 and 1960. The finding to ban the crabmeat was based on a request by Members of Congress which were confirmed by affidavits of former prisoners. It should be noted that more than 100 Members of Congress have requested that the goods on the CIA list be banned, and literally dozens of ex-prisoners can testify to mining, producing, or manufacturing products of the types contained in the CIA list.

(5) There is no question that forced labor is an integral part of the Soviet Union's export production. There is also no question that a substantial amount of goods entering the United States from the Soviet Union is made at least in part with forced labor. Human rights organizations have found that arrests increase in the Soviet Union in direct proportion to the number of people needed to fill the labor quota. As a matter of public policy, we should not be subsidizing, and therefore encouraging, the Soviet Union's abuse of its own citizens.

(6) In the final analysis, the major issue here is whether the law should be enforced. Since 1930, the Smoot-Hawley Tariff Act has been on the books. At no time has the Administration requested repeal of the forced labor provision. In fact, the law is currently being enforced with respect to certain basket products made in Mexico. For more than two years, the Treasury Department has thwarted the law and the will of Congress regarding this specific provision. If the law is contrary to foreign policy concerns, which I do not believe is the case, the Administration should take action to change it. If the law is appropriate foreign policy, it should be fully enforced.

STATEMENT BY SENATOR CHARLES E. GRASSLEY

Mr. Chairman: When my Administrative Assistant was preparing my statement for this hearing he wondered whether or not he was in conflict of interest since he

said he could identify with the term "Forced Labor" as stated: All work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.

In all seriousness though Mr. Chairman, I, like most members of this committee, am concerned about our trade deficit problem in which we are disadvantaged by unfair trade practices, likewise, I am as concerned by imports into this country of imports made by convict, forced and/or indentured labor. Section 307 of the Trade Act of 1930 however goes further by stating that this import is barred, unless U.S. production of such products is insufficient to meet domestic demand. I'm not sure in my own mind whether that is even sufficient reason, since in effect what we are saying is we will condone such action when it is in our own selfish interest.

From the preliminary information I have received on this subject I am concerned about the ITC study which found that China and the Soviet Union, while accounting for only two percent of total U.S. imports, represents the largest potential supplier of compulsory labor goods. Likewise, I am concerned that the same study has found in the last twenty years there have been no documented complaints to the custom service about U.S. imports of such products.

The question I have uppermost in mind then is with the relatively small amount of products coming into this country, 60–75 incidences since 1930 where interested parties have requested, and/or Customs has considered the application of section 307 and no documented complaints to Customs of U.S. imports of such products in the last twenty years. . . . do we have a real problem here that this committee needs to address or would we be better off addressing the bigger problem of trade imbalances?

As someone who has taken a strong interest in the area of human rights, I look forward to the panels discussion of this topic.

Senator DANFORTH. This hearing was requested by Senator Armstrong, who has taken a very keen interest in the whole issue of the importation of products made in other countries by convict labor and the extent of the enforcement of American law prohibiting the importing of such goods. We are delighted to begin this morning with a distinguished Member of Congress who has also been very interested in this subject, Congressman McKinney. It is good to have you with us, Congressman.

STATEMENT OF HON. STEWART B. McKINNEY, U.S. REPRESENTATIVE FROM THE STATE OF CONNECTICUT

Congressman MCKINNEY. Thank you, Mr. Chairman. It is good to be here, and I am sorry that Bill can't be here with us, but I wish him the best. In March 1980, Herbert Murd, an Estonian Methodist activist, was arrested in the Soviet Union on charges of "parasitism," which is the failure to engage in socially useful work, after being expelled from a music conservatory. Shortly after completing his 1-year labor camp sentence, he was arrested again for alleged nonpayment of alimony. He had no income after his release because he was systematically kept out of other jobs for being a religious activist. On October 25, 1982, a letter from P. Paritskiy described the conditions in Soviet forced labor camps where her husband, Aleksandr Paritskiy, was sentenced for 3 years. He was accused of having distributed slanderous material on the Soviet State and the social system and was assigned to manual labor in a railroad tie factory. He was held with 2,000 prisoners in an area where disease was endemic and the death rate reached 2 percent in 1 year. When told to renounce his religious ideals and repudiate the idea of emigrating from the Soviet Union, Aleksandr refused. Shortly afterward, he was assigned to a more strenuous job. Crowded living quarters (75 to a room), lack of medical attention, physical abuse, and food rationing were also part of Aleksandr's confine-

ment. His wife's story ends with uncertainty as to whether he will be released or resentenced for another crime.

These reports, Mr. Chairman, come from a Department of State study which also states that "economic considerations play an important role in the Soviet corrective labor system." Very simply, when the authorities need convict labor, they expect the judicial system to supply it. Mr. Chairman, as we speak, the Soviet Union clearly is violating human rights. That is not debatable. It is blatant violation of two multinational treaties—the Anti-Slavery Convention of 1926 and the International Labor Organization Convention— further demonstrates its failure to fulfill its commitment to the universal declaration of human rights. These treaties maintain that large-scale use of forced or compulsory labor undermines basic human rights. They also compared forced labor abuses to the crime of slavery. Although both treaties were ratified by the Soviet Union and both remain in force today, reports indicate that Soviet authorities still exploit forced labor on a very large scale.

What is even worse, Mr. Chairman, is the fact that, as we continue to speak and not act on the issue of slave or forced labor, we in the United States—the land of opportunity and liberty—are violating one of our own laws which prohibits the importation of goods made by such a work force. Section 307 of the Smoot-Hawley Tariff Act of 1930, as amended, prohibits the importation of goods from any foreign country made wholly or in part by convict, forced, or endentured labor. Under the Department's regulations, if the Commissioner of Customs has information that reasonably but nonconclusively indicates that merchandise within the purview of section 307 is being or is likely to be imported, such merchandise is not permitted to enter our country until a final determination is made. That final determination requires the approval of the Secretary of Treasury. Once merchandise is detained, the burden falls on the importer to show that the goods were not made, in part or in whole, by forced labor.

A 1983 State Department report estimated that most of the $227 million worth of goods purchased by the United States from the Soviet Union in that year were from industries which the Central Intelligence Agency believes made extensive use of slave labor. Such products included: uranium, $10 million worth; wood and wood products, $3.5 million; gold, $4.2 million; chemicals, $118 million; and tractors, $500,000. The study also stated that the Soviet's forced labor system—the largest in the world—plays an important part in the Soviet economy. It is made up of a network of 1,100 labor camps and 4 million laborers, 10,000 of whom are believed to be political or religious activists. Finally, last December, the International Trade Commission provided Congress with a comprehensive report on the nature and extent of the U.S. imports from state trading nations, such as the Soviet Union, manufactured by forced labor. The ITC verifies the difficulty in obtaining specific information on which products are made in whole or part by slave labor, and it expresses frustration that the importer is not responsible for proving particular goods are not made by forced labor, when there is reasonable information indicating they are.

All societies engage in some form of incarceration, and most attempt to employ prisoners in some form of gainful activity. Yet,

there is sufficient information through the CIA, the Department of State, and former Soviet prisoners which shows that the Soviet Union has used forced labor to bolster its economy and harass political and religious activists. Stories of women and children forced to work for long hours, crowded living conditions, lack of warm clothing, and food rationing based on output all violate one's basic human rights. With such stories and information circulating for years, Mr. Chairman, one must ask why the Secretary of the Treasury and the Commissioner of Customs have refused to take definite steps to enforce the Smoot-Hawley Act.

In 1983, the administration was advised by Congress that there was growing evidence that the United States was importing products from the Soviet Union produced by slave or forced labor. Such stories as the one printed in the Reader's Digest, "Made in the U.S.S.R., by Forced Labor," by Joseph Harris, told of the harsh conditions, false sentencing, and economic hardships—and the bell just rang. So, I would ask unanimous consent that the rest of my testimony be included in the record.

Senator DANFORTH. Would you like to summarize the rest of it, Congressman?

Congressman MCKINNEY. Yes, Mr. Chairman, just very, very briefly. We have, you know, twice—in 1983 the House passed House Concurrent Resolution 100 by an overwhelming vote of 402 to 0. The resolution called upon the Soviet Union to end its current repressive policies of forced labor. The Senate passed a resolution calling on the administration to use section 307 to bar the import of goods from the Soviet Union produced with forced labor. It seems to me, Mr. Chairman, I must remind everybody that I am of the party of this administration—that this administration, like others, has just really sort of chosen to wiggle their fingers at Congress and say go away boys, we are not interested. And once again, we play the—I don't know—the sucker to economics for foreign policy. If I were ever to see the Soviet Union do anything right—which I haven't in my 54 years—I could see where we might try to negotiate this. But this is just another blatant example of the Soviet Union's denying every single agreement they have ever signed from the early 1900's right through the Helsinki agreement.

[The prepared statement of Congressman McKinney follows:]

TESTIMONY OF THE HONORABLE STEWART B. MCKINNEY

Mr. Chairman: In March 1980, Herbert Murd, an Estonian Methodist activist, was arrested in the Soviet Union on charges of "parasitism" (the failure to engage in socially useful work) after being expelled from a music conservatory. Shortly after completing his one-year labor camp sentence, he was arrested again for alleged nonpayment of alimony. He had no income after his release because he was systematically kept out of other jobs for being a religious activist.

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These reports come from a Department of State study which also states that "economic considerations play an important role in the Soviet corrective labor system." Very simply, "when the authorities need convict labor, they expect the judicial system to supply it."

Mr. Chairman, as we speak, the Soviet Union clearly is violating human rights. That is not debatable. Its blatant violation of two multilateral treaties, the Anti-Slavery Convention of 1926 and the International Labor Organization Convention, further demonstrates its failure to fulfill its commitment to the Universal Declaration of Human Rights. These treaties maintain that large-scale use of forced or compulsory labor undermines basic human rights. They also compare forced labor abuses to the crime of slavery. Although both treaties were ratified by the Soviet Union, and both remain in force today, reports indicate that Soviet authorities still exploit forced labor on a large scale.

What is even worse, Mr. Chairman, is the fact that as we continue to *speak* and not act on the issue of slave or forced labor, we in the United States—the land of opportunity and liberty—are violating one of our own laws which prohibits the importation of goods made by such a work force. Section 307 of the Smoot-Hawley Tariff Act of 1930, as amended, prohibits the importation of goods from "any foreign country" made "wholly or in part" by convict, forced, or indentured labor. Under the department's regulations, if the Commissioner of Customs has information "that reasonably but not conclusively" indicates that merchandise within the purview of section 307 is being, or is likely to be imported, such merchandise is not permitted to enter our country until a final determination is made. That final determination requires the approval of the Secretary of the Treasury. Once merchandise is detained, the burden falls on the importer to show that the goods were not made, in part or in whole, by forced labor.

A 1983 State Department report estimated that most of the $227 million worth of goods purchased by the U.S. from the Soviet Union in that year were from industries which the Central Intelligence Agency believes make extensive use of slave labor. Such products included: uranium ($10 million worth), wood and wood products ($3.5 million), gold ($4.2 million), chemicals ($118 million); and tractors ($500,000). The study also stated that the Soviet's forced labor system, the largest in the world, plays an important role in the Soviet economy. It is made up of a network of 1,100 labor camps and four million laborers, 10,000 of whom are believed to be political or religious activists. Finally, last December, the International Trade Commission provided Congress with a comprehensive report on the nature and extent of U.S. imports from state trading nations, such as the Soviet Union, manufactured by forced labor. The ITC report verifies the difficulty in obtaining specific information on which products are made in whole or in part by slave labor and it expresses frustration that the importer is not responsible for proving particular goods are not made by forced labor, when there is reasonable information indicating they are.

All societies engage in some form of incarceration and most attempt to employ prisoners in some form of gainful activity. Yet, there is sufficient information, through the CIA, the Department of State, and former Soviet prisoners which shows that the Soviet Union has used forced labor to bolster its economy and harass political and religious activists. Stories of women and children forced to work long hours; crowded living conditions, lack of warm clothing; and food rationing based on output—all violate one's basic human rights. With such stories and information circulating for years, Mr. Chairman, one must ask why the Secretary of Treasury and the Commissioner of Customs have refused to take definite steps to enforce the Smoot-Hawley Act.

In 1983, the administration was advised by Congress that there was growing evidence that the U.S. was importing products from the Soviet Union produced by slave or forced labor. Stories such as one printed in Reader's Digest, "Made in the U.S.S.R. By Forced Labor," by Joseph A. Harris, told of the harsh conditions, false sentencing and economic hardships the Soviets were imposing on its forced laborers. Letters were sent by House Members to the Commissioner of Customs, William von Raab, requesting that the Smoot-Hawley Act be enforced. Much to the House's pleasure, in September 1983, von Raab informed Treasury Secretary Donald Regan of his plan to begin applying the forced-labor ban against 36 Soviet products. Unfortunately, Regan decided to refer the issue to an interagency group for further study.

In November 1983, the House passed H. Con. Res. 100 by an overwhelming vote of 402 to zero. The resolution called upon the Soviet Union to end its current repressive policies of forced labor, and condemned these policies as morally reprehensible. The Senate also passed a resolution calling on the administration to use section 307 to bar the import of goods from the Soviet Union produced with forced labor. De-

spite these signals, neither adequate action nor adequate responses were received from Customs or Treasury.

On May 4, 1984, I joined 83 of my colleagues in sending a petition to Commissioner von Raab, demanding that Smoot-Hawley (Title 19 of the United States Code, Section 1307) be enforced. A list of the suspected forced labor products from the CIA's study was enclosed with a demand that he immediately detain or otherwise prevent them from entry into the United States until a final decision could be made by Treasury. I would, at this time, Mr. Chairman request unanimous consent to enclose a copy of this letter for the hearing record.

This petition was subsequently denied and through the Washington Post Foundation, we requested a judicial review. Mr. Paul D. Kamenar, Executive Legal Director of the Washington Legal Foundation, can provide you with the specifics of the litigation as he was responsible for filing and arguing the case. The case was argued in April and we still are awaiting a decision.

Mr. Chairman, I appreciate having had the opportunity to testify and can only hope that our continued efforts will put an end to this autrocious violation of human rights. We have a law on the books, and Congress has made its message clear to the Administration: The United States can no longer import any goods made by human suffering. I urge Commissioner von Raab and Secretary Baker to take immediate steps to halt the importation of any products suspected of being made by forced labor.

Thank you, Mr. Chairman.

Senator DANFORTH. Do you think that the reason for enforcing section 307 would be to—or should be to—change the behavior of the Soviet Union, or do you think that it would be justified even if the behavior of the Soviet Union or other countries were not changed? Do you think it should be a statement of moral principle by the United States?

Congressman MCKINNEY. Slave labor, No. 1, is never justified. If any one of our——

Senator DANFORTH. I know that. That is not the question. The question is about the rationale for the enforcement of section 307. Is the rationale for the enforcement of 307 in your view to change the behavior of another country or, even if the behavior were not changed by the enforcement of the law, is the rationale the fact that the United States has to make a moral stand, whether or not it is an effective one?

Congressman MCKINNEY. Absolutely. You hit the nail on the head. I mean, we are not going to change the behavior of any country, but we have to stand for what we stand for. And we have had too many examples in history from Nazi Germany right on through of this Nation pretending it would go away. I don't see how the greatest democracy in the world can possibly be buying millions and millions of dollars worth of materials that are probably produced by slave labor.

Senator DANFORTH. Senator Moynihan.

Senator MOYNIHAN. I agree. I think I might make a further point that we are supposed to enforce our own laws.

Congressman MCKINNEY. That is a minor rub I have always had. I would say to my good friend from my neighboring State that, somehow or other, there just seemed to be a way—whether it is a Republican or Democratic administration—they can forget that the Congress represents the people of the United States and do this.

Senator MOYNIHAN. I think you are right, sir, and I thank you very much for your testimony.

Congressman MCKINNEY. Thank you.

Senator DANFORTH. Thank you, Congressman.

Congressman MCKINNEY. Thank you very much.

Senator DANFORTH. Next, we will skip to Paula Stern, the Chair of the International Trade Commission.

STATEMENT OF HON. PAULA STERN, CHAIRWOMAN, INTERNATIONAL TRADE COMMISSION

Dr. STERN. Good afternoon.

Senator DANFORTH. Madame Chairwoman, thank you very much for being here.

Dr. STERN. Chairman Danforth and Senator Moynihan, I would like to introduce you to Reuben Schwartz, who is our division chief, who worked so long and hard to help us produce the report which I am here to speak to you about this afternoon. This is a report which we have tried to treat dispassionately, in spite of the fact that there are very legitimate, sincerely felt passions which are raised on this topic. I will offer a brief summary of the statement which I provided to the committee yesterday. As may be inferred from the lengthy title of our study, our report covers several topics that relate to international trade and goods made by compulsory labor. The two principal areas of study are: One, the international agreements and the domestic laws relating to compulsory labor; and two, the nature and extent of U.S. imports that may have been produced by compulsory labor. Now, there are at least nine international agreements dealing with the use of compulsory labor, and these agreements deal with the human rights aspects of compulsory labor, and they are not directly concerned with controlling or with regulating trade and products made by such labor. Control of trade is left rather to national legislation. In the United States, imports of goods made with compulsory labor have been banned from entry into this country since 1890. This ban has been applied infrequently, and until 1982, compulsory labor imports have not been considered a major trade issue. Indeed, our review of Customs Services files revealed only eight instances over the past several decades where imports had actually been prohibited entry because they were made with prison labor. It is often difficult to determine with any certainty if imports are made with compulsory labor, as physical examination by Customs officers of the goods is not revealing and information about production conditions in foreign countries—particularly controlled nations—is often limited, with obviously little or no information available from those closed societies. Consequently, in many of the cases that we studied, the available information was—in Customs' opinion—too anecdotal, or too spotty, or nonspecific to reach a firm conclusion to ban those imports. In 1982, allegations concerning the use of forced labor in the construction of the Siberian gas pipeline stimulated interest in the exclusion of U.S. imports of Soviet products made because of the use of compulsory labor in the U.S.S.R. This possible exclusion differed from past cases, not only because of the extremely high level of interest which legitimately ensued, but also because it raised the possibility of using the law to ban a broad range of imports from a country, rather than applying it to a specific import entry, as had been done previously by the Customs Service. However, on January 28, 1985, as you know, the Treasury Department determined that there wasn't sufficient evidence to link the Soviet forced labor

practices with specific U.S. imports from the Soviet Union and that there was no current sound basis to bar imports. The Soviet Union is not unique in the use of prison labor for production of goods. The Commission found that many countries, including the United States, use some of its prison population to produce goods that enter local commerce and that products from some countries' prison systems ultimately will find their way into international trade.

Now, I would like to turn to the issue of U.S. compulsory labor imports from all sources. While the Commission did have access to some confidential information from other agencies, the nature of the subject matter and the problems involved in verifying allegations of the use of convict labor make it very difficult to report with confidence on the extent of U.S. imports made with convict labor. Nonetheless, the Commission has concluded that most of the output of foreign convict labor is consumed within the country where it is produced and that any goods made with foreign convict labor imported into the United States are negligible relative to total U.S. imports. The major free market countries which supply the bulk of our imports have relatively small prison populations, the majority of which are not engaged in any work programs. In addition, their prison outputs often sold to other government agencies or consumed locally is often of a type or quality that is not suitable for export to the States. Further, government policies often discourage the exports of such products. As for the nonmarket countries, especially China and the U.S.S.R., they have very large prison populations; and although they supply under 2 percent of total U.S. imports, they represent the largest potential suppliers of compulsory labor goods. The Soviet prison population is estimated at 4 million, with about 1.5 million believed to be engaged in making products that might enter commerce. And in 1982, the Department of Commerce preliminarily estimated the value of excludable imports at $28 million, and then in 1983, Customs estimated that excludable imports amounted to $11 million.

I have a brief statement just on China, and then I will close. We estimate the total prison population of China to be between 3 and 4 million persons, and about three-quarters of the prisoners are producing agricultural products, which we assume are consumed domestically. And it is estimated that 1 million prison laborers produce the types of products that could enter international trade, and a portion of that might be imported into the United States.

That concludes my wrap-up of our rather lengthy study, which we had the pleasure of presenting to you all formally last January. I would be happy to answer any questions you might have.

Senator DANFORTH. Thank you.

[The prepared statement of Dr. Paula Stern follows:]

STATEMENT OF PAULA STERN

Good afternoon, Mr. Chairman and members of the Subcommittee. Thank you for giving me the opportunity to testify before this hearing on imports of products made by cumpulsory labor.

The U.S. International Trade Commission, which I chair, was created by Congress in 1975 as a successor to the U.S. Tariff Commission, which was established by Congress in 1916. It is an independent, bipartisan, quasi-judicial agency with broad

powers to investigate all factors relating to the effect of U.S. foreign trade on domestic production, employment, and consumption.

Although not charged with a policy making role, the Commission contributes substantially to the development of sound, equitable international trade policy by conducting factfinding studies to aid the Admistration and Congress. These studies are conducted under section 332 of the Tariff Act of 1930, which provides broad authority to investigate trade-related matters. They are usually initiated by a request from the President, the House Ways and Means Committee, the Senate Finance Committee, either branch of Congress, or on the Commission's own motion.

Our study, "International Practices and Agreements Concerning Compulsory Labor and U.S. Imports of Goods Manufactured by Convict, Forced, or Indentured Labor," was prepared in response to a congressional request for information on this subject. It should be understood that the Commission did not have the resources to verify independently information provided by other Government agencies or by other persons or entities. However, in preparing this report, the Commission used its best judgement in the course of its research to analyze, interpret, and present the available information. The Commission has attempted to compile in one report information not previously available in a single source. The report is not intended for use in any investigation under section 307 or any other legal proceeding.

The importation of goods produced with compulsory labor has been an area of concern in the United States for at least 100 years. The United States first enacted a prohibition on the importation of goods manufactured with convict labor in the McKinley Tariff Act of 1890, and the prohibition was expanded and modified to cover products of forced or indentured labor in section 307 of the Smoot-Hawley Tariff Act of 1930. I will use the term "compulsory" labor to refer to convict, forced, or indentured labor. Federal regulations give the responsibility for enforcement of section 307 to Customs, which is required to gather information and determine if goods should be excluded from entry into the United States because of the compulsory labor content. The regulations provide, in part, that—

"If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being or is likely to be imported, . . . the district directors shall thereupon withhold release of any such merchandise. . . ." [1]

The use of section 307 has been relatively infrequent, and the only case recently under review by Customs to ban imports of products made with compulsory labor concerned allegations made against goods from the Soviet Union.

Since 1930, there have been approximately 60 to 75 instances where interested parties have requested, and/or Customs has considered, the application of section 307, and in the past several decades there were only 8 cases where imports were actually banned. Examination of Customs' files reveals wide variations in the nature of the investigations conducted, the amount of information gathered and the determinations that were reached. In part, these variations are a result of the discretion Customs must exercise in each case because of the differing amount and degree of reliability of the information available relating to the imports of goods alleged to be made with compulsory labor. In addition, it is almost impossible to obtain any such information from closed societies. I practice, the ban on imports made with compulsory labor has been subject to some flexibility in interpretation. On an ad hoc basis, Customs has permitted the importation of prison goods where the size of the shipment was small, where the prisoners were working voluntarily and were compensated, or where importers promised not to enter subsequent shipments. Also, the new Customs guidelines currently in use provide that imports should not be prohibited when the compulsory labor content is de minimis or the resulting price advantage to the foreign producer is de minimis.

Nearly all countries, including the United States, utilize convict labor as part of their correctional system, and such programs, if properly operated, are not regarded as violating human rights. U.S. Federal and State prison systems operate prison industry programs. Most of the products produced, including textile and apparel articles, furniture, license plates, and brushes, are either used by the institution or sold to other institutions and to Federal, State or other tax-supported agencies. Goods produced in prisons generally are banned from interstate commerce, but there is no legal prohibition against exports of products made by convict labor in State institutions. It is estimated that less than $100,000 of prison-made goods are exported from the United States annually.

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[1] U.S. Customs Service regulations relating to merchandise produced by convict, forced, or indentured labor are found in the Code of Federal Regulations at 19 CFR 12.42–12.45.

Foreign governments also maintain prison industry systems. Although some prison populations are large, notably those in the People's Republic of China and the Soviet Union, it is believed that most of the output of the foreign prison systems is consumed internally and little is exported.

There are at least nine international agreements dealing with the use of compulsory labor. Although the agreements and conventions seek to ban or humanize practices such as slavery, slave labor, and forced or indentured labor, they do not ban convict labor. In addition, the agreements deal with the human rights aspect of compulsory labor and are not directly concerned with controlling or regulating trade in products made with such labor. Control of trade is left to national legislation.

The United Nations and the International Labor Organization are the major organizations where alleged violations of international agreements are discussed and complaints filed. Both of these organizations have mechanisms for receiving and investigating complaints of alleged human rights violations, but often the investigations can be conducted only if the subject country is cooperative. There are no established method for enforcing recommended corrective measures.

Now I would like to turn to the issue of U.S. compulsory labor imports from all possible sources. While the Commission had access to some confidential information from other agencies, the nature of the subject matter and the problems involved in verifying allegations of the use of convict labor make it very difficult to report with confidence on the extent of U.S. imports made with convict labor. Nonetheless, despite the lack of specific import data, the Commission has concluded, based on its research, that U.S. imports of goods made with compulsory labor represent a very small percentage of total imports. Athough the prison population of the 30 countries studied in this investigation is estimated to total about 9 million, relatively few prison workers are believed to produce goods for the export market. A large proportion of the prisoners are employed in prison maintenance, public works, construction, local agriculture, or other activities that do not produce products that enter into commerce. Prisoners producing commercial products, most of which are consumed within the countries in which they are made, are estimated to number less than 3 million.

Major free-market countries, which represent the bulk of trade into the United States, normally do not export prison-made goods to the United States. For example, Canada, Japan, Mexico, and the EC, which together supply 60 percent of the total value of U.S. imports, have an estimated total prison population of less than 300,000 (see table 1 for individual country data). In nearly all these countries, only convicted criminals are required to work, and in most cases only 40 to 70 percent of the convicted prisoners participate in work programs at any given time. Additionally, much of the convict labor is engaged in housekeeping work in support of the operation of the correctional institutions. As a result, it is estimated that, in these major supplying countries as a group, fewer than 100,000 prisoners are engaged in producing products suitable for commercial distribution. Even when prison workers are making products to be sold outside the correctional system, the products are often sold to other government agencies or for local consumption. Also, government policies may discourage exports of goods made with compulsory labor, or the goods may not be suitable for export because of poor quality. As a result, only a small quantity of output is potentially available for export.

Nonmarket economy countries, especially China and the U.S.S.R., which together account for under 2 percent of total U.S. imports, represent the largest potential suppliers of compulsory-labor goods. The Soviet prison population is estimated at 4 million, of which 1.2 million to 1.5 million are believed to be engaged in the production of goods that might enter international commerce. According to the very limited information available to us, the most likely imports of such goods from the U.S.S.R. might include products such as various chemicals, metal ores, petroleum products, glassware, miscellaneous metal articles, agricultural equipment, furniture and wood cabinets, and electrical equipment. Preliminary estimates made by the Department of Commerce in 1982 and Customs in 1983 put the value of imports from the Soviet Union that were considered for exclusion at $28 million in one instance and $11 million in the other. Current data on total U.S. imports from the Soviet Union are shown in table 2.

Although no firm data are available on China's prison population, one source estimates that it totals at least 3 million to 4 million persons. However, about three-quarters of the prisoners are producing agricultural products which are assumed to be consumed domestically. It is estimated that approximately 1 million prison laborers produce the types of products that could enter into international trade, a portion of which might be imported into the United States. Among U.S. imports from

China, products most likely to have some compulsory-labor content would include handmade rugs, fireworks, and baskets and bags.

This concludes my prepared testimony. I would be happy to answer any questions you may have about the Commission's report.

TABLE 1.—TOTAL POPULATION AND PRISON POPULATION, BY SELECTED COUNTRIES, 1983

Country	Total population (thousands)	Prison population (thousands)	Ratio of prison population to total population (percent)
Major trading partners:			
Canada	24,910	20	0.08
Japan	119,260	54	.04
Mexico	74,000	32	.04
European Community:			
United Kingdom	56,300	44	.08
Germany	61,420	(1)	(1)
France	54,650	33	.06
Italy	56,740	40	.07
Netherlands	14,360	4	.03
Belgium and Luxembourg	9,860	2 7	.07
Denmark	5,110	3	.06
Ireland	3,510	(1)	(1)
Greece	3 9,790	(1)	(1)
Taiwan	3 18,810	44	.23
Republic of Korea	39,950	56	.14
Hong Kong	5,310	7	.13
Brazil	129,660	50	.04
Indonesia	3 156,670	4 36	.02
Total	840,310	(1)	(1)
Nonmarket economies:			
China	1,028,000	5 4,000	.38
U.S.S.R.	270,040	6 4,000	1.48
Poland	36,570	(1)	(1)
Romania	22,550	(1)	(1)
Czechoslovakia	15,420	(1)	(1)
Total	1,372,580	(1)	(1)
Other:			
Republic of South Africa	3 30,040	3 91	.30
Argentina	29,630	(1)	(1)
Austria	7,550	9	.12
Chile	11,680	3 14	.12
Colombia	3 27,200	45	.17
Dominican Republic	5,960	(1)	(1)
Haiti	3 5,200	(1)	(1)
Pakistan	89,730	32	0.06
Zaire	3 30,260	(7)	
Total	237,250	(1)	(1)

1 Not available.

2 Estimated by the staff of the U.S. International Trade Commission on the basis of the relationship of the prison population to the total population for 1976–78 from Belgium's Ministere Des Affaires Ecnomiques, Annuaire Statistique De La Belgique, Tome 102, 1982.

3 1982 data.

4 As of the end of 1980.

5 The prison population in China is estimated by Hungdah Chiu, professor of law, University of Maryland, Baltimore, MD, to be at least 3 million to 4 million persons, according to his letter of Nov. 20, 1984, to the Commission.

6 Central Intelligence Agency, "The Soviet Forced Labor System," November 1982, p. 2.

7 The size of the prison population in Zaire is unknown. However, in a declassified portion of a classified report supplied by the U.S. Department of State and prepared by the U.S. Embassy, Kinshasa, it was stated that there are no products produced for sale or services performed for remuneration by prisoners in Zaire.

Source. Total population, compiled from U.N. Monthly Bulletin of Statistics (except Taiwan); prison population, compiled from reports supplied by the U.S. Department of State and prepared by the U.S. embassies in the respective countries, except as noted.

TABLE 2.—LEADING ITEMS IN U.S. IMPORTS FOR CONSUMPTION FROM SOVIET UNION IN 1982, 1983, 1984, JANUARY–APRIL 1984, AND JANUARY–APRIL 1985

[Customs value, in thousands of dollars]

YSUSA number	Description	1982	1983	1984	January–April	
					1984	1985
4751015	Light fuel oils a tcr 25 deg	0	48,913	168,040	31,164	15,092
4806540	Anhydrous ammonia	88,765	85,722	139,604	50,485	40,823
6050260	Palladium, palladium	24,836	41,849	59,267	24,145	14,808
4803000	Urea, nspf	10,434	38,913	44,694	22,864	26,151
1143000	Crabs fresh chilled frozen	2,107	12,790	15,248	5,644	2,219
6050750	Palladium bars plates etc	1,685	4,343	15,154	6,696	1,471
1241045	Sable furskins, whole, raw	7,164	7,803	9,789	3,763	2,393
4750535	Heavy fuel oils un 25 deg	15	0	9,082	0	357
4805000	Potassium chloride or	4,600	4,134	8,996	5,500	0
6180650	Unwrought alloys of alumium	219	137	7,211	0	1,003
1693800	Vodka in containers not over	7,173	9,883	7,036	1,797	1,747
4751035	Heavy fuel oils 25 deg api	0	0	6,029	0	0
4753000	Kerosene derived from shale	0	0	5,449	0	0
6181000	Aluminum waste a scrap	0	0	4,703	422	1,514
6050270	Rhodium, rhodium content	3,475	2,105	3,674	472	2,794
4017415	Ortho-Xylene	0	0	3,578	889	2,228
6050710	Platinum bars, plts sheets nt	1,197	2,356	3,331	1,319	149
4011000	Benzene	0	0	2,985	0	1,419
4752520	Gasoline	10,341	0	2,977	0	0
6050220	Platinum sponge platinum	3,961	3,003	2,955	422	2,644
2401440	Plywood, birch face not face	1,374	2,283	2,622	910	404
7650300	Paintings, pastels, drawings	115	3,102	2,017	1,909	449
4257000	Acetic acid	0	0	1,842	0	268
6063542	Ferosilicon, contng 30%	0	0	1,816	0	0
1693700	Vodka in containers not over	2,173	1,220	1,655	326	687
2452020	Hardboard, not face finished	1,569	1,359	1,604	560	631
6052020	Gold bullion, refined	1,493	1,438	1,443	272	280

2451000	Hardboard, n/face-finished	436	731	1,427	302	387
6063546	Ferosilicon cont ovr 30%	0	2,804	1,335	1,319	1,928
4016400	Pseudocumene	0	0	1,222	0	217
4800500	Limestone for fertilizer	0	2,210	1,205	1,205	0
4017420	Para-xylene	0	0	1,143	0	2,071
1133000	Sturgeon roe frsh, chilled,	1,022	788	912	339	334
4230030	Rare-earth oxides except	1,144	1,237	748	268	318
3798311	Mens wool suit-type coats &	0	0	704	0	0
7662560	Antiques nspf	526	1,005	687	313	160
4026400	Monochlorobenzene	0	0	678	0	0
5203300	Diamonds ov ½ car, cut, not	403	200	675	50	0
6923406	Tractors, wheel ex cardo new	7	735	645	255	470
	Total	178,597	287,262	549,034	165,412	126,807
	Total, all items imported from Soviet Union	228,602	340,486	556,122	167,801	141,416

Source: Compiled from official statistics of the U.S. Department of Commerce.

Senator DANFORTH. What are the major countries that we suspect of using convict labor for the purpose of producing goods?

Dr. STERN. That may be exported——

Senator DANFORTH. That may enter the United States.

Dr. STERN. The largest population, as I said, is from the Soviet Union and China, but they represent such a small portion of our imports that, when we look at the case records that Customs has of the times in which they have intervened—the eight cases in the last couple of decades—most cases deal with our neighbors, Mexico and Canada. One of the eight cases dealt with was the Soviet Union. It would make sense that it would be those where there was actually commerce and a larger flow of commerce coming into the United States, even though the prison populations may be potentially greater in the nonmarket countries.

Senator DANFORTH. From the standpoint of goods made by convict labor which get into the United States, how would you rank the countries?

Dr. STERN. Again, Mexico is No. 1. I think then it is Canada, and then a variety of other countries. The Soviet Union is one of those eight. That is based on the cases of Customs.

Senator DANFORTH. The situation in Canada is furniture. Is that correct?

Dr. STERN. I think it is gymnastics equipment. Maybe it is furniture also.

Mr. SCHWARTZ. There were a couple of investigations conducted by Customs. One involved booklets from Canada in 1974.

Senator MOYNIHAN. Did you say booklets?

Mr. SCHWARTZ. Booklets, pamphlets. Booklets entitled "Correctional Industries Association, 1973-74, Directories." Those are directories of Canadian correctional industries. That, somehow, was distributed in this country. There was another instance where an investigation was conducted on automotive exhaust parts from Canada in 1979, and there was another case that involved gymnastic equipment from Canada.

Dr. STERN. Your furniture example, Senator Danforth, is from Mexico.

Senator DANFORTH. I see, but these are cases of not rounding up people and sending them off to some camp where they are to be employed, making items for sale?

Dr. STERN. Oh, no.

Senator DANFORTH. This isn't the Gulag situation. For example, in Jefferson City, prisoners make license plates and road signs and some furniture, and so forth, and that is more of that nature. Is that correct?

Dr. STERN. That is our understanding. That is our understanding. It is not a situation where another nation says we have a great market in the United States for X product and we are going to make it as cheap as possible. We are going to get some indentured servants. Instead, I think much of it has to do with prison practices where it is believed that it is more humane to have a prisoner engaged in doing something that is constructive and productive.

Senator DANFORTH. Yes. What is the standard of proof in our section 307? Do we have to prove the use of convict labor by a reasonable doubt, or by a——

Dr. STERN. Those are the magic words: Reasonable, rather than conclusively, under section 307 of the law.

Senator DANFORTH. Yes. We have to prove that the—what do we have to prove? By a reasonable preponderance of evidence—is that it? Or what?

Dr. STERN. The language says "reasonable." I would have to get the citation for you. This is a cite directly from section 307. What is in front of me now is implementing legislation.

Senator DANFORTH. I think it is in the regulation, rather than in the statute.

Dr. STERN. Yes. The implementing regulation says that if the Commissioner of Customs finds at any time information available reasonably, but not conclusively, indicates that merchandise within the purview of section 307 is being or will likely be imported, he will promptly advise all district directors accordingly, and the district directors shall thereupon withhold release of any such merchandise, pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation. And I might add that, in the cases that we looked at, for example, the one Soviet case, the goods were not permitted to be imported into the United States for a period of over a decade, whereas in some of the others, the period was for a shorter period of time. So, it seemed to be within the discretion of the Commissioner of Customs when to advise the district directors further when——

Senator DANFORTH. Let me just ask this. Obviously, you are not going to have too many cases where you have courtroom evidence that is going to be presented at the insistence of convict labor making such a product. So, we have to operate on the basis of something other than conclusive evidence.

Dr. STERN. That is correct.

Senator DANFORTH. Correct. I mean, obviously, Congress intended something less than beyond a reasonable doubt or something like that. We are asking for the best judgment. Isn't that correct?

Dr. STERN. That is correct. I mean, I think that is the reason why "reasonably, but not conclusively" is underscored there.

Senator DANFORTH. Yes. Supposing that a certain type of product is totally "fungible." I mean, supposing that, for example, in country X they make 1,000 nails for export, and of the 1,000, 50 are made in prisons. How would we enforce such a situation? I mean, if 5 percent of the total output of a fungible commodity is made by convict labor, would we attempt or should we attempt to keep out all of that particular commodity, or should be attempt to keep out 5 percent of it? Or do you have to specify which specific nails in this case are made by convicts? How would that be done, or should it be done?

Dr. STERN. Fortunately, I don't have to make those kinds of decisions. I mean, the Customs Services—the Customs' Commissioner—is charged with administering this law. But to be responsive to your question, which I gather would be more my personal view, because I am not administering the law, I would say that based on the practice at our Commission, even though you may have a fungible item, there are very few items which are truly fungible in the sense that there is no qualitative difference; there is no difference in terms of how long it takes to supply the market; there are lots of

arrangements between a supplier and a purchaser, based on long-standing practice, based on ability to provide an item and quick turnaround——

Senator DANFORTH. Do you think that tracing is possible?

Dr. STERN. I think that with regard to tracing it is hard to jump from a finding that something is being produced overseas to that it is being purchased in this country. I think it is very hard to trace it, and that was one of our problems. When we looked at the responses that we were getting from different cables—from State Department cables in different countries—we found observers unable actually to trace it back to a prison. I mean, you could say that there are prisons that are producing, say, nails, and the country is also producing nails, but you couldn't directly trace a given nail that enters the United States to that prison.

Senator DANFORTH. That is exactly my question, composing a fungible commodity, and the total output of that commodity or that product is 5 percent from convict labor and 95 percent from non-convict labor. What do we do in that case? Do we keep out all of that commodity coming into the United States, or do we artificially keep out *x* percent?

Dr. STERN. I guess a rule of reason—and we are talking about reasonable—maybe you could artifically keep out *x* percent, but I don't think that it is reasonable to conclude that all of the items that are coming into the United States could be made by the convicts.

Senator DANFORTH. *x* percent of what? You know, *x* percent of the fees, or 5 percent of everything coming to the border?

Dr. STERN. Again, I have not had to administer this law so I am giving you responses that are not based on even any examples where we have done it.

Senator DANFORTH. I guess it is not fair to ask you this. Just for my own edification, though. I suppose that there are two possible—maybe more, but two possible—criticisms that could be leveled against the enforcement of section 307. One is that, for some practical reasons, it is not enforceable. You can't identify the product. You don't know what is coming in. You don't know what is happening. For some reason, it is unenforceable. The second possible criticism is that, for policy reasons, whether or not it is enforceable, we shouldn't try to enforce it. Does the first criticism hold water? I mean, is the objection to 307 if the administration appears and says we are not going to enforce it or we are not enforcing it. Is the objection to the enforcement of 307 simply a practical objection—impossibility of enforcement? Or is the objection a policy one—for some reason, we don't want to shut these products out, even though we know what they are?

Dr. STERN. I would say that we should try to enforce it. I think it is part of our heritage. It is something that has been in our law since 1890. But given our commercial expertise—and this is derived from the study that we did of this problem—commercially it is very hard to nail down one of those nails, and that doesn't mean that we shouldn't seriously look into every one of the allegations that comes up and that we shouldn't be vigilant. But I also think that we have to realize that we have one of the largest prison populations in the world, and we are producing within our own prison

populations a number of goods. Most of them stay in the United States. And that is likely the case overseas as well.

Senator DANFORTH. Clearly, the difference between producing something in, say, the Jefferson City penitentiary—a road sign or something—there is a difference between that and herding people into gulags for the purpose of using slave labor to produce something for export. It would seem to me that there is a clear difference between them.

Dr. STERN. There is a distinction in what you have just described, but in terms of what we got back in our report, we did not see that there were people who were pulled together for the purpose of producing for export. We did not find that second example that you described.

Senator DANFORTH. Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, Senator Armstrong had two questions he wanted to ask. Have you asked them?

Senator DANFORTH. I have not asked them.

Senator MOYNIHAN. I will submit both for the record.

Dr. STERN. I will be happy to answer them.

Senator MOYNIHAN. I would like to read the second and get a quick response. The ITC report, which Mr. Schwartz was responsible for, states—and I am reading Senator Armstrong's words—that those in Congress interested in enforcing current law "appear to be primarily concerned about human rights violations, rather than protection against import competition." And I assume that is right, Mr. Schwartz?

Mr. SCHWARTZ. Yes, that is correct.

Senator MOYNIHAN. However, as Senator Armstrong continues: "Do you not agree that the law does not assign motive? It simply states that forced labor made goods are not imported." Is Senator Armstrong correct?

Mr. SCHWARTZ. Yes, yes; that is also correct.

Senator MOYNIHAN. Could I ask that you give a formal response to Senator Armstrong's questions?

Dr. STERN. Sure, we will be glad to do so.

Mr. SCHWARTZ. We will do that in writing.

Dr. STERN. We discuss the legislative history of 1890 and the 1930 laws in our report.

Senator DANFORTH. And I am told that Senator Armstrong has questions for a number of witnesses.

Senator MOYNIHAN. Actually, we could just compile them.

Senator DANFORTH. Yes.

Senator MOYNIHAN. He is necessarily absent. He knew he would not be able to be here, although he had planned to be.

[The responses to Senator Armstrong's questions follow:]

RESPONSES TO WRITTEN QUESTIONS PRESENTED BY SENATOR ARMSTRONG AT THE JULY 9, 1985, HEARING ON U.S. IMPORTS OF GOODS MADE WITH CONVICT LABOR

Question 1. In early 1984, the ITC was asked to report on the nature and extent of imports into the United States of goods made with forced labor. Is it correct that the ITC report was a compilation of already-available evidence and that the Commission did not have the resources to verify independently information provided by other persons or agencies?

Answer. The preponderance of the report was a compilation of already-available material. However, the Commission did develop original information on about 25

countries which export to the United States, concerning the size of their prison populations and their use of prison labor to produce goods.

The Commission did not have the resources to independently verify information provided by other persons or agencies.

Question 2. The ITC report states that those in Congress interested in enforcing current law "appear to be primarily concerned about human rights violations rather than protection against import competition." However, do you not agree that the law does not assign motive, it simply states that forced labor made goods are not importable?

Answer. The Commission agrees that the law clearly bans U.S. imports of goods made wholly or in part with convict, forced, or indentured labor and does not concern itself with the motive for any such ban.

U.S. DEPARTMENT OF STATE,
Washington, DC, July 19, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate.

DEAR MR. CHAIRMAN: Following the July 9 hearing on the enforcement of U.S. prohibitions on the importation of goods produced by convict labor, at which Mark Palmer testified, additional questions were submitted to be answered for the record. Please find enclosed the responses to these questions.

With best wishes,

Sincerely,

WILLIAM L. BALL III,
Assistant Secretary,
Legislative and Intergovernmental Affairs.

Enclosures: As stated.

Question. It is my understanding that the State Department has indicated some foreign policy concerns over the forced labor provision. Has State at any time sought a change in the law to allow for non-enforcement on foreign policy grounds or has it simply chosen to agree with Treasury's non-enforcement policy?

Answer. The Department of State fully supports the position that the forced labor provisions of the Tariff Act of 1930 should be enforced when there is clear evidence that a product to be imported into the United States has been made with forced labor. We have never sought a change in the existing law on foreign policy grounds. The Department has repeatedly made clear in its public statements that the use of forced labor in the Soviet Union is a human rights issue of great concern. We believe, however, that the selective application of Section 307 to imports from the Soviet Union in the absence of sufficiently detailed and reliable evidence would have negative foreign and trade policy implications both with respect to the relations with our Allies as well as with the Soviets. Acting to ban Soviet imports in the absence of sufficient evidence would be viewed by the Allies as an attempt on our part to wage economic warfare against the USSR and could undermine our efforts to coordinate closely our East-West trade policies with them. It would also be very likely to cause Soviet retaliation and significant losses of sales to US farmers and others who, with the Administration's support, are engaged in the sale of non-strategic goods to the Soviets.

Question. In reviewing your testimony before the House Foreign Affairs Committee in 1983, you stated that the amount of goods entering the United States which are made with Soviet forced labor may only be in your words "negligible." Does this mean that the law which specifically states "wholly or in part" should not be enforced simply because these goods are not a major portion of our foreign imports? How much would you consider to be "enough" for enforcement?

Answer. The point Mr. Palmer was making in his 1983 testimony was that while forced laborers produce a substantial amount, in absolute terms, of primary and manufactured products, this is only a small percentage of total Soviet industrial production. An even smaller percentage is exported, and, of this, only a very small fraction reaches the U.S. Of these imports, we need evidence to identify those goods which were produced using forced labor. As noted in the draft Treasury regulations concerning the evidentiary standards for the application of Section 307, merchandise is excludable if any part or component is made with prohibited labor, except where the part of component is de minimus.

Question. Assuming as you stated in 1983 that the "human rights issue is of great concern to this Administration" and that "Soviet forced labor gravely infringes internationally recognized fundamental human rights," would it not be good foreign policy, if only for symbolic reasons, to enforce the law particularly if the amount of goods is negligible?

Answer. This Administration has made serious efforts to get satisfaction from the Soviet Union on a broad range of issues of concern to the American people. We have particularly stressed human rights and emigration issues. We do not believe, however, that in attempting to emphasize our interest in an improvement in Soviet human rights practices, and specifically our concern about forced labor, we should ignore the evidentiary standards required to implement Section 307 and apply its provisions to Soviet imports in an arbitrary manner. Indeed, such an application of Section 307 could undermine the credibility of the considerable effort that the Administration has made to encourage international awareness of Soviet forced labor practices—witness our extensive 1983 report on this subject.

FORCED LABOR HEARING—COMMISSIONER VON RAAB, CUSTOMS SERVICE

Question 1. I would first like to set the basis for how the forced labor provision of the 1930 Smoot-Hawley Tariff Act is to be enforced. Is it correct that the law requires the prohibition of products made wholly or in part by forced labor? Is it correct that current regulations state that any class of merchandise shall be prohibited from entering the U.S.? And is it correct that your decision to prohibit the entry of these products must be based only upon reasonable but not conclusive evidence?

Answer 1. The answer to each of these questions is yes. The law requires the prohibition of products made wholly or in part from forced labor, and the Customs Regulations require that any classs of such articles be prohibited from entering the United States. Section 12.42(e) of the Customs Regulations provides that if the Commissioner of Customs finds that information available to him reasonably but not conclusively indicates that merchandise within the purview of section 307 of the Tariff Act of 1930 is being imported into the United States, he shall instruct district directors to withhold release of such merchandise.

Question 2. In 1983, you made a finding that some 36 products made in the Soviet Union were produced with forced labor based upon information furnished by the CIA, is that correct? Have you ever withdrawn this finding?

Answer 2. The 1983 finding with respect to 36 products was based on information sent by the CIA to Senator Armstrong and inserted by him in the *Congressional Record* of September 15, 1983. Based on additional information subsequently made available by the CIA, and standards developed jointly with the Treasury Department, I replaced this list with a shorter one which proposed to exclude five categories of merchandise.

Question 3. Jumping back to the banning of Soviet crabmeat in 1951, did the Customs Commissioner at that time have any more specific information than what you had in 1983 when you made your decision with respect to the 36 products? Do you believe that your finding at the time was based upon "reasonable evidence" as required by current Customs Service regulation?

Answer 3. The records pertaining to the 1951 action are not complete, but it appears that the decision was based on information from both the Central Intelligence Agency and the Department of State as well as affidavits from Japanese prisoners of war who were held by the Russians.

My finding on the 36 products was based on the information from the CIA which Senator Armstrong published in the *Congressional Record*. As you know, the CIA subsequently has expressed reservations about the reliability of that information for the purpose of enforcing section 307.

Question 4. It is my understanding that once the Customs Commissioner has made a finding, he immediately has the non-discretionary duty to notify his district directors to hold products until an investigation is completed. Can you tell us why you were unable to carry out this non-discretionary step?

Answer 4. Because this would have been a major step which would have effected many commercial interests in the United States, I believed I should not proceed until I had advised the public of this action by publishing a notice in the *Federal Register*. I am required to have all notices to be published in the *Federal Register* approved by the Treasury Department. As you know, the Treasury Department was concerned about the evidentiary basis for this action, and determined that it should be subjected to a more extensive interagency review.

Question 5. In December of 1983, you issued a list of 5 products which met the stricter evidentiary standards developed at the request of the interagency group. At

that time, did you have any doubt that these products indeed met the criteria listed in your regulations? Were you again prevented from issuing notice to your district directors at that time? What was the basis for calling together this interagency group that is not required by any regulation to my knowledge?

Answer 5. At the time I submitted the shorter list to Treasury for publication in the *Federal Register* I was satisified that the stricter evidentiary standards had been met. Treasury declined to approve publication of the notice until the matter could be reviewed by other agencies which might have pertinent information. I assume the basis for calling together the interagency group was to obtain the best possible information and advice before proceeding with what is clearly a very significant action.

Question 6. I understand that no final decision was made by Secretary Regan until May 16, 1984. His decision was based upon a letter from CIA Director Casey dated May 16th which restated: There was "a good deal of information" that the Soviet Union makes extensive use of forced labor. That the CIA estimated that there were approximately 2 million forced laborers in camps and an additional 2 million assigned to construction projects. There is "convincing evidence that convict and forced labor is used extensively in the Soviet Union."

Still, Director Casey concluded that his information was "fragmentary" and based upon this, Secretary Regan denied your finding the same day. Do you find it odd that Director Casey's letter was signed and arrived at Treasury, was "carefully reviewed" by the Secretary, a written response was approved and sent to your office, and the press was notified all in the same day?

Answer 6. Because this is a matter of significance, I would expect that the Secretary of the Treasury would give it his immediate attention, and act promptly to carry out his decision. I am sure that the Secretary and the Director of Central Intelligence had informal conversations about the contents of the letter prior to its being sent.

Question 7. Since you are the only witness provided by the Treasury Department on this issue, can you tell us why information provided by the CIA, information publicly available and reconfirmed by former prisoners, and information provided by the ILO which had had a long-term and active interest in this issue are not enough to provide "reasonable evidence" for enforcement?

Answer 7. Obviously, in taking an action this significant I would prefer to have information systematically collected by an official source, rather than anecdotal information from unofficial sources. However, as you know, the CIA has reviewed the information it has collected and has advised that the information is not sufficiently reliable to form the basis for a significant decision such as this.

Senator MOYNIHAN. I guess my question to you is this: I think it is the case that the chairman suggested that the great prison populations of the Soviet Union and China have come about as a result of political intentions within those regimes. They desire to take people out of their normal lives and put them in the Gulag, or somewhere similar. It is not a question of finding labor to produce a great wall or, in one way or another, produce sugar cane or all the various things which slave labor have been used for in the past. We know that the Soviets have a huge prison population, the result of political terror in the regime, and have used them to develop the Siberian reaches to which they have been consigned. Now while I am always surprised to find that there is oil and gas under all that ice and snow or sand, the point is these products are now exported. Do we have any sense of the degree to which prisoners are involved in the production of these things?

Dr. STERN. No; we have a list of Soviet imports to the United States, and petroleum, of course, is their major foreign currency earner. And some of those petroleum products do make their way to the United States. The product which is the most prominent that is based on their natural gas riches is the anhydrous ammonia, which—as you know—is part of a countertrade arrangement which goes back to, I guess, about 1972. That is the largest one

item I think that relates to your question about the oil and gas resources. That it has a slave labor connection——

Senator MOYNIHAN. Prison labor really.

Dr. STERN. Or prison labor, we do not have information which ties the imports to the practice which you describe and which historically is, I think, an acceptable description of much of what they developed.

Senator MOYNIHAN. Have you made any proposals for on-site inspection?

Dr. STERN. An on-site inspection? We do not have the resources. I know this is not a budgetary hearing so I won't go into that, but we were limited to compiling responses that we got from different countries, including the Soviet Union, through the good offices of the Department of State. We are very much appreciative as well as dependent upon the State Department in many of our investigations when it comes to describing the foreign markets.

Senator MOYNIHAN. That answers my question. Mr. Chairman, could I have just another moment? The Chairwoman appears before us in transparent good faith and willingness. And Mr. Schwartz, I welcome you to this committee also. Can we take it that to the degree information is brought to you, you take it seriously and assess it as best you can?

Dr. STERN. Yes; we have relied on the Government's sources and treated them with good faith. We tried with other sources—limited that they were—to try to verify those sources as well before we would include them.

Senator MOYNIHAN. Has the International Labor Organization provided materials of any use to you?

Dr. STERN. I would like for Mr. Schwartz to comment on the value of the sources.

Mr. SCHWARTZ. We did obtain information from the ILO, and it was especially useful for providing background as to international agreements and conventions concerning the use of slave labor or compulsory labor. But as far as relating to the issue that seems to be of immediate concern—that is, our importation of goods made with compulsory labor—we did not get any information from them.

Senator MOYNIHAN. So their materials have not, therefore, been very helpful.

Mr. SCHWARTZ. Only to the extent of describing—as I mentioned before—the conventions and agreements which try to limit and control and improve the conditions of such labor in various countries and additional background—the types of hearings they have and recommendations they make for change, but not, again, dealing with trade or specific transactions involving goods made with this type of labor.

Senator MOYNIHAN. Mr. Chairman, thank you very much. These seem to be very forthcoming answers from officials of the executive. Do you consider yourselves part of the executive?

Dr. STERN. No, sir, I will take the forthcoming, but you can keep the executive. [Laughter.]

We are an independent commission.

Senator MOYNIHAN. I thank the International Trade Commission, and I look forward to hearing the further witnesses who might be of use to you in this subject. Thank you very much.

The CHAIRMAN. Thank you very much. Senator D'Amato is present now. We are happy to have you with us, Senator.

STATEMENT OF HON. ALFONSE D'AMATO, U.S. SENATOR FROM THE STATE OF NEW YORK; CHAIRMAN, HELSINKI COMMISSION

Senator D'AMATO. Thank you, Senator. Mr. Chairman, let me thank you for giving us the opportunity to testify and for the fact that you are holding these important hearings on international trade, and more particularly, on slave labor as it relates to Smoot-Hawley, the Tariff Act. I am going to ask, Mr. Chairman, that my remarks which encompass some 19 pages of testimony and in which we outline specific cases and testimony given by witnesses with respect to their forced labor—that it be included in the record as if read in its entirety.

Senator DANFORTH. We are grateful to have the information and even more grateful if you would summarize it.

Senator D'AMATO. Thank you, Mr. Chairman. Mr. Chairman, today the Treasury Department has deliberately failed to enforce the import ban on products coming into this country that were produced by slave labor in the Soviet Union, despite the fact that the Customs Service has identified 36 categories of products made by the Soviet slave labor that are now being or likely to be imported. The Treasury Department has failed to effectively stop them from coming into our country. Enforcement of the ban on such imports has been woefully inadequate and should be removed from the back burner and put on the front burner at once. The Customs Services should provide Congress with a detailed listing of those countries responsible and the specific products being sold in the United States that were produced by slave laborers in the Soviet Union. In September 1983, the Customs Department requested permission from Treasury to halt the importation of Soviet-made items in 36 categories, believed to be the results of slave labor. We have, Mr. Chairman, included a list of those products. After that request was denied by Treasury, Customs narrowed the list to five categories: gold, tea, refined oil products, agricultural machinery, and tractor generators. Treasury once again refused to halt these imports from the Soviet Union. I don't believe that we can allow ourselves to be a party to the illegal enslavement of some five million innocent people in the Soviet labor camps by providing a market for the goods that these people are forced to produce. The Soviets utilize a vast network of labor camps, mobile labor brigades in all sectors of their economy. Forced laborers are assigned tasks under horrendous working conditions as the documentation that we have submitted indicates. These are conditions that no other workers would endure. The testimony from the few who have survived these horrors tell us that they are subject to the most dangerous and strenuous labor. They are forced to live in freezing and filthy camps. These poor souls, Mr. Chairman, are deprived of adequate clothing and shelter and often what little food they are given will be taken away unless they meet specific quotas. So, they find it convenient to say in international forums that the days of Stalin and the Gulags are behind them. Yet, it is apparent that they have simply become more adept at glossing over them. It is unconscion-

able for us to help prop up their failing economic system by ignoring existing statutes that prohibit the importation of goods produced by slave labor. Mr. Chairman, the bottom line is that either we should adhere to the law or then let's be honest with ourselves and with people and say that it is impractical. Let's then remove the law from the books, but to want to have it both ways, to want to say that we stand up against slave labor from wherever it may come and that we can point to the law as an example, and then to repeatedly thwart the implementation of that law, I think, flies in the face of what we should and must be about. So, Mr. Chairman, I would hope that your committee and these hearings will result in the specific categories in Customs being required to report to the Congress those categories of activities that have come about—those products that have come about—as a result of slave labor. Those countries they believe are responsible for sales both in and out of the United States so that we can bring about an end to this horrendous practice here in the United States.

Senator DANFORTH. Thank you, Senator D'Amato.

[The prepared statement of Senator D'Amato follows:]

STATEMENT OF SENATOR ALFONSE M. D'AMATO, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. Chairman and members of the subcommittee, I appreciate your invitation to appear before you today as Chairman of the Commission on Security and Cooperation in Europe. In my remarks I intend to focus on Soviet reliance on forced labor. As part of our monitoring of Soviet compliance with the Helsinki Final Act, the Helsinki Commission has long been concerned with this issue.

Before reviewing Soviet reliance on forced labor, let me begin with a short statement of the problem. The United States has had a law on the books for fifty-five years prohibiting the importation of goods manufactured wholly or in part with forced labor. The Treasury Department has deliberately failed to enforce the import ban on products coming into this country that were produced by forced labor in the Soviet Union. Despite the fact that the Customs Service has identified 36 categories of products made by Soviet forced labor that are now being or likely to be imported, the Treasury Department has failed to effectively stop them from coming into the U.S.

The Customs Service has identified 36 products made by Soviet forced labor that are being or are likely to be imported into the United States. Enforcement of the statute banning these imports has been woefully inadequate. This vital issue should be removed from the back burner at once.

The Customs Service should provide Congress with a detailed list of the U.S. companies responsible for the importation of goods manufactured in the Soviet Union employing forced labor. The Customs Service should provide Congress with a list of the Specific products now being sold in the United States which are the product of Soviet forced labor.

The United States is honor bound to fully enforce this statute. We cannot allow ourselves to be a party to the illegal enslavement of some five million innocent people in Soviet labor camps.

Testimony from the few who have survived these horrors and escaped to the West tell us they are subject to the most dangerous and strenuous labor, and are forced to live in freezing and filthy camps. These poor souls are deprived of adequate clothing and shelter, and often what little food they are given will be taken away until they are starved into submission.

The Soviets find it convenient to say in international forums that the days of Stalin and the Gulags are behind them. Yet it is apparent that they have simply become more adept at glossing them over. It is unconscionable for us to prop up their falling economic system by ignoring existing statutes that prohibit the importation of goods produced by forced labor.

In the Soviet Union, about five million Soviet citizens are sentenced to hard labor, half of these prisoners in a vast system of at least 1,100 labor camps. Another 2.5 million prisoners are assigned to hard labor in mobile labor brigades. At least 10,000 Soviet citizens are imprisoned for the peaceful expression of personal political, na-

tional or religious views. These 10,000 prisoners are being held in direct violation of international human rights agreements, including the Helsinki Final Act, to which the Soviet Union is a party.

The major purpose of this vast network of labor camps is to maintain and perpetuate the Soviet economic system. The Soviet economy is heavily reliant on forced labor. Many former Gulag prisoners note that nearly all sectors of the Soviet economy rely on forced labor. Cheap Gulag labor is important for meeting quotas established by Moscow economic planners. Forced laborers are assigned tasks that other workers do not want to do.

Although there are thousands of political prisoners in the camps, these people are only the tip of the iceberg. Prison labor provides Soviet authorities with a huge labor force that is cheap, obedient and transportable. There is some evidence that local police and courts are given prisoner quotas to meet the labor demands of the Gulag system. Thus, when the Soviet system falters, there is an automatic mechanism for conscripting labor.

Former Soviet prisoner Gyorgy Davydov, in testimony before the Helsinki Commission in 1983, stated that the logging and woodworking industry is most reliant on forced labor. Prisoners do everything from felling timber and making lumber to manufacturing furniture. The construction industry ranks second; prisoners construct barracks, plants, factories, etc. Prisoners sometimes build entire new towns. Prisoners also work in pipeline construction, clearing forests, draining swamps, preparing roadways, as well as actually laying pipe and building compressor stations. Soviet metallurgy, metalworking, textile, glass, chemical, mining and other industries also rely on forced labor. According to Davydov, forced laborers seldom work on farms, since food deprivation is a major way to punish prisoners.

According to Anatoly Marchenko, imprisoned Russian writer: "The labor camp system constitutes a versatile machine for squeezing from the convicts sufficient surplus value to make Soviet products manufactured for export really competitive on the world market."

Marchenko goes on to give an example from his own long camp experience. "A propaganda display has been built in our camp: 'Where Our Products Go.' We see that products of the workshop with the unrevealing name 'Institution VS 389/35' are sent to the socialist countries, and exported to Egypt, Pakistan, India and France. Of course, they are forwarded through in Sverdlovsk or some other town without the hallmark of the prisoner who produced them. VS 389/35 is only a subsidiary of those great enterprises producing for export. We know to what countries our producers are sent, but do the buyers know where the products are made? Do they know who produced them, receiving for their labor thin soup with maggots and, if they fail to produce their 'quota,' the punishment cell?"

Camp conditions, always poor, have deteriorated in recent years. The cells are dark, overcrowded and unsanitary, with only a bucket to serve as a toilet. There is very little heating in the camps, even during the coldest of the Siberian winter months. Clothing, strictly rationed by the camp authorities, is always in short supply. Food is used as a form of punishment; prisoners are sometimes starved into submission by camp authorities. Prisoners are often deprived of family visits—sometimes for years on end. And health care is grossly inadequate. Although the Soviet Gulag system is not as brutal as it was under Stalin, its purpose remains the same: to isolate and punish millions of people who have fallen afoul of the Soviet state.

Perhaps the most telling evidence of the dramatic downturn of conditions in Soviet labor camps has been a recent rash of deaths of prisoners of conscience. Since early 1984, at least ten imprisoned human rights activists have died in the Soviet Gulag: five Ukrainians (Oleksey Tykhy, Valery Marchenko, Yuriy Lytvyn, Anton Potochnyk, and Boris Artushenko); two Armenians (Eduard Artunyan and Ishkhan Mkrtchyan); two Russians (Aleksei Nikitin and Valentin Sokolov); and Roza Kikbaeva.

Working conditions are abysmal. Although prisoners in theory have a 48-hour week, they often must work without pay on days off and on holidays to meet unrealistic quotas. Prisoners are not paid a fair wage. The pittance they are paid is subject to numerous and arbitrary deductions. This system is much worse than existed in company towns during the days of our corporate robber barons.

As prisoner Anatoly Marchenko says, "Neither the state nor the hard-earned money of Soviet taxpayers supports us. We Soviet prisoners pay for our food, clothing, boots and even our barbed wire and guards."

Prisoners must work extra days to compensate for family visits. Equipment and machinery is obsolete and dangerous. People lose fingers or hands on wood-working machinery. Eye damage, acid burns and other injuries frequently occur. Those who

work with glass often develop severe respiratory problems. When prisoners complain, they are punished by losing correspondence or visitation rights.

Imprisoned peace activist Alexandr Shatravka smuggled out a report about conditions in his camp in Kazakhstan in 1984: "I landed in the 94th brigade for the knitting of big nets of synthetic fiber for vegetables. The norm was six nets in eight hours. We worked from six in the evening until two in the morning. The norm was very high and so the majority of prisoners were forced to knit in their non-working hours, devoting to this another six to eight hours. For failure to fulfill the norm, the foreman several times deprived us of a day's sleep so that in the daytime, we knitted nets. When I and another prisoner mentioned this to the brigade leader of the prisoners, I was summoned to the brigade captain, Dosnatov, who regarded my indignation as anti-Soviet agitation and said that as long as I was in the Soviet Union and not in the United States, I would knit nets without any conversation."

After the Soviet invasion of Afghanistan, the Soviets embarked on an even harsher law-and-order campaign—KGB style. An intensified anti-human rights campaign went hand-in-glove with a new crackdown in Soviet camps and prisons. This repression has several aims: to further isolate camps from the outside world; to demoralize inmates through greater brutality; to discourage others from "contagion" by human rights activitists; and to augment the authorities repressive arsenal.

Prisoner Shatravka reports on extensive camp violence: "In the camp, there rages a cult of violence, the prisoners are beaten literally for any trifle and particularly for failure to fulfill the work plan, whether this is for sewing production or making nets. Also, in the camp they have begun exercise drills. They demand that after work, the prisoners stand and hold their left leg extended for several minutes and then their right leg. Those who cannot do this are beaten by the prisoner activists."

Shatravka then describes his own torture: "On May 31, 1984, I was summoned to the boss of the detactment (I don't know his last name). He locked the door of his office and began to beat me savagely. With blows, he knocked the wind out of me, he kicked me in the groin and then in the head and continued to beat me for a long time. He gave me to understand that this is how it would be every day that I did not fulfill the work norm."

He continues: "Leaving him, I was received by the camp commandant, Colonel Bakhaev, but he refused my request to be transferred to other work. In despair, not seeing any way out of the situation, I tried to kill myself, stabbing myself in the side.

Shatravka concludes: "After I was given medical aid, I fell into the hands of a division chief, Dulatbaev. He knew all a man's most vulnerable parts and began to beat me. He beat me several times around the neck after which I fell and lost consciousness. He clapped both of his hands on my ears causing a powerful ringing. He choked me and beat me along the organs of my body, insulting me. I was then put in the punishment isolation cell for fifteen days. Despite the filth, parasites, meager food and water, I was nevertheless able to recover psychologically. Everything which goes on in this camp is like one of those films which shows Gestapo tortures."

Mr. Chairman, the Soviet forced labor system I have just described is a vast human tragedy. Freedom from all types of slavery is the oldest right recognized by the international community. Soviet reliance on forced labor violates the U.N. Charter, the Universal Declaration of Human Rights, the 1926 Slavery Convention, ILO Convention 29, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The Soviet Union is a party to all these treaties. The Soviet Gulag also flouts the spirit and the letter of the Helsinki Final Act and the Madrid Concluding Document.

We have the ability to take direct action in response to these outrages. Morally, we are compelled to act or we become silent accomplices to these barbaric acts. Fortunately, no new legislation is required to enable direct and forceful United States' action—indeed, a law requiring action has been on the books for fifty-five years. Section 307 of the 1930 Tariff Act, better known as the Smoot-Hawley Tariff Act, *prohibits* the importation of goods manufactured wholly or in part by forced labor.

My Co-Chairman, Steny Hoyer, the distinguished Congressman from Maryland, will discuss the battle to achieve active enforcement of this provision at length in his statement. He has been personally very active on this issue.

Earlier in my statement, I listed some of the industries in the Soviet Union that utilizes forced labor extensively. We do import items from those industries. For example, from the Soviet wood and paper industries, the industry most reliant on forced labor, the United States imported over $140,000 worth of items in each of the last two years. In the petroleum industry, which would be covered in the shorter, revised Customs recommendation of only five groups, the U.S. imported about $10.3 million in 1982, $56 million in 1983 and $14.5 million in 1984. We have imported

from the U.S.S.R. approximately $500,000 in tea as well, which would also be covered by the Customs ban. These are only a few of the categories. We can include agricultural machinery, gold ores, tractor generators and certain chemicals as well.

There is no reason for our failure to enforce this law. It can and it must be enforced and be enforced now.

If we can verify Soviet military production and research and development with sufficient accuracy to confidently wager our national security on it, we can certainly verify the employment of Gulag labor in the manufacture of specific classes of products. After all, the camps and factories comprising the Gulag are no harder to locate and identify, or to verify their activity, than a military barracks or a tank factory. Let's make sure the Gulag is an intelligence target, too.

Also, the Commission recently held a hearing to review the outcome of the Ottawa Human Rights Experts Meeting. At this hearing, we were repeatedly told by Deputy Assistant Secretary of State Palmer, who is, I understand, to follow us as a witness here today, that human rights is an essential and fundamental part of our foreign policy.

Just how essential is it if we can't enforce a 1930 law against the importation of goods made with forced labor? Just how fundamental is it if millions of human beings are being deprived of their liberty, their health and their very lives to produce goods their masters export to earn hard currency?

At this Commission hearing, I joined with my fellow Commissioners supporting linkage between Soviet failure to comply with human rights agreements and progress in trade matters. Here, we have an opportunity we must use to make this statutory linkage effective, as we intend it should be.

There is no more clear-cut case of deprivation of human rights than the continued operation of the Soviet Gulag. If we cannot muster the courage to block the importation of goods manufactured with the forced labor of these millions of prisoners, we have proven ourselves hypocrites of the worst kind. We have said to the world, "we love human rights in principle, but we won't pay the price to fight for them in practice."

Mr. Chairman, I am sure our nation is too great and too strong and we are, in fact, too true to our own principles to let this happen. We must keep faith with the millions in the Gulag's camps and mobile labor brigades.

While these prisoners are laboring, suffering and sometimes dying under terrible conditions, we can help them by helping deny their masters the economic gain they seek from the flesh and blood of the very workers their state claims to protect and advance.

Thank you, Mr. Chairman.

Senator DANFORTH. Do you have any explanation of why the goods are coming into the United States?

Senator D'AMATO. Mr. Chairman, there are the glossed-over explanations that, indeed—how do we distinguish those who may be truly enslaved and prisoners of conscience—religious and political prisoners—as distinguished from those in their penal system. It might be likened to turning out work and work products as they may find in the United States in our system, and, of course, the two are entirely different. There is no comparability between the goods that are manufactured and the fact that at our prisons in our system it is almost a thing that is cherished by the prisoners themselves, to have the opportunity; unless they meet certain standards, they are not permitted to undertake work, and that they earn money, et cetera. It is not used as a form of supporting this Nation. So, it is glossed over. I, for the life of me, cannot understand why. I might add that I see Commissioner von Raab here. He has been, I think, a leading voice crying out for the law to be enforced. He may have certain political constraints placed upon him in his testimony today, but I think if he were given a free hand, I think we would see a number of areas of activity where slave laborers responsible for goods coming into this country, where the Customs Department would enforce the law. I think Treasury——

Senator DANFORTH. You think it is a political decision?

Senator D'AMATO. Absolutely. There is no doubt in my mind that it is political expedience that determines this, and I would think that if we have a law, let's live up to the law.

Senator DANFORTH. Senator Moynihan?

Senator MOYNIHAN. I want to welcome my colleague. I would say that is a very vivid account you have written in your testimony and your summary of it. But I guess I don't have the option, do I, to ask you if it is political expedience that is preventing our enforcing this law?

Senator D'AMATO. I have to say to my distinguished chairman that this has been going on for many years. We just simply look the other way. These are the international niceties which I know that you are familiar with in your distinguished service, having many times faced these problems and obstacles as not only a Senator but as Ambassador to India and Ambassador to the United Nations. There are those in the bureaucracy who don't want to rock the boat. Now, if, indeed, there are products that are being made as a result of the kinds of activities that the Helsinki Commission staff has outlined in the report that we have submitted to you, then certainly there is no good reason for us not to enforce the law. I would hope that as a result of these hearings, that we can get those lists from Customs, that Customs does come forward with them and give the documentation for why they believe that these products should be barred from the country.

Senator MOYNIHAN. What you are saying is that this is an administrative routine. It is the way the organizations behave, rather than the influence of anybody who might—in some brief authority—be responsible?

Senator D'AMATO. I would think that it is easier not to rock the boat. There are many more pressing matters. If one were the Secretary of the Treasury—one might be more concerned with today's issues of tax reform, et cetera, as opposed to attempting to identify with specificity those areas that are——

Senator MOYNIHAN. Your Commission would like to see us just raise this a little higher on the agenda of the politically appointed heads of these organizations to say that, among the many things you have to do today, this ought to be one of them?

Senator D'AMATO. There are many statutes on the books, as it relates to Treasury finances in particular. I dare say that there are some that may not be enforced. This is one that should be enforced.

Senator MOYNIHAN. I thank you very much.

Senator DANFORTH. Thank you, Senator D'Amato.

Senator D'AMATO. Thank you, Senator.

Senator DANFORTH. Now, Congressman Wolf has arrived. Congressman, we are happy to have you with us.

STATEMENT OF HON. FRANK WOLF, U.S. REPRESENTATIVE FROM THE STATE OF VIRGINIA

Congressman WOLF. Mr. Chairman, I want to thank you for holding these hearings on a very difficult and emotional issue involving the U.S. involvement in importing goods made by slave labor in Soviet Union prisons. I appreciate your leadership on this issue

and the opportunity to testify. Based on my discussions with Treasury and Customs officials before the House Appropriations Subcommittee on Treasury, Postal Service, and General Government, it is my understanding that there are an estimated 4 million convict laborers in the U.S.S.R. Much of today's Soviet economy is built on the backs of those men and women and children who toil in the nearly 2,000 Russian prisons and forced labor camps. I think it is important to note that the Soviet Union is the only major industrialized nation that makes convict labor a mainstay of its economy. Statistics and information like this are often difficult for Americans to understand. As your colleague from Colorado, Senator Bill Armstrong, has said: "Forced labor is a shameful situation beyond the comprehension of most Americans, particularly since we don't have it in this Nation and in the West." Americans cannot understand why a woman scrawling graffiti on a wall, saying "You strangle our freedom, but you can't shame people's souls" would be imprisoned and put in camp for 3 years. during which time she worked 12-hour shifts. Nor can we understand how quotas for work production during such shifts were set impossibly high, and those who failed to meet them had their meager food rations cut. Most citizens would be appalled knowing that a founder of a community of Catholic believers who was considered a subversive for such action would spend 15 years in prisons, camps, and psychiatric hospitals for his actions.

The issue of forced labor is particularly a heinous one which runs so counter to the basic freedoms and rights of all people, and yet, it has become common practice in the Soviet Union. For example, when a big public project is in the works, the Soviet Union will sometimes increase arrests for hooliganism and parasitism—activities that we know in the United States as unemployment. Police round up men and women for the forced labor pools, sometimes resorting to entrapment, like having an old lady ask a young man to try on a jacket to see if it would fit her son, and then police promptly arrest the young man for shoplifting.

This type of violation of human rights is unconscionable, and yet, it is common in Russia. Just as appalling is the fact that the United States has become an accomplice in this crime against human rights by our lack of enforcement of existing statutes prohibiting the importation of such products. Section 307 of the 1930 Tariff Act states, "All goods, wares, articles, and merchandise, produced or manufactured wholly or in part in any foreign country by convict labor or forced labor * * * shall not be entitled to entry at any time at any of the ports of the United States, and the importation thereof is hereby prohibited." This, in effect, says the United States will in no way participate in or support the exploitation of people for the purpose of commerce and that such goods made by forced labor will not be accepted for entry into the United States.

Enforcement of this ban on these goods falls under the jurisdiction of the U.S. Customs Service. The law states, "If the Commissioner of Customs finds at any time that information available 'reasonably'—and just use the word 'reasonably'—but not conclusively indicates that merchandise within the purview of 307 is being or is likely to be imported, he will promptly advise all district directors accordingly, and the district directors shall withhold release of any

such merchandise pending further instructions." Clearly, the burden of proof, if such materials are seized, rests with the exporting country to prove that such goods are not the biproduct of forced labor.

By not enforcing the ban on slave labor, we open wide the door of commerce for unsuspecting Americans to financially support the actions of the Soviet Union when they purchase such goods. For example—and I know this committee well knows—in 1983, the Commissioner of Customs compiled a list of 36 products suspected of being made by slave labor. That list, according to the law, should have been enforced, but instead, officials of Treasury requested Customs to reduce the original list. The list was shortened to five items, including goods such as tea, tractor generators, gold ore, oil products, and agricultural machines. For a variety of diplomatic, intelligence, and security reasons, a decision was made in Treasury not to enforce a ban on these suspected products.

I understand the concerns that providing such goods are made by forced labor might compromise intelligence operations. However, the burden of proof does not lie with the United States, but with the country seeking to find a market for its goods in the United States.

I am deeply concerned about efforts to pick and choose which laws will and will not be enforced. And I am also disturbed by the Treasury Department's attitude toward this problem. From documents I have reviewed, it appears that the decision not to pursue or support enforcement of the ban on the Customs Commission's list of products appears to have been made on May 16, 1984, 1 day before a congressional committee approved language withholding Treasury funds for any activity such as this which would prevent Customs from enforcing this ban. This apparent ploy to circumvent action expected by Congress does not advance the cause of human rights. However, just 4 months ago, on March 4, 1985, before the House Appropriations Subcommittee on Treasury, Postal Service, and Customs, the Customs Commissioner again admitted that there was a problem. He stated, "In my view, there are classes of items coming into the United States that are made in the Soviet Union with slave labor. It is my personal belief that there are such cases."

It is disturbing that this practice exists and our Government is ignoring it. And I might say that the Commissioner of Customs is not ignoring it. He is very aggressive and wants to do something in this area.

Because of our concerns, though, I offered the same rider included in last year's Treasury funding bill to the fiscal year 1986 Treasury-Postal Service appropriations during subcommittee markup 2 weeks ago. This rider would withhold funding of any activity where the payment of salary to any individual preventing the Customs Services from enforcing this slave labor goods ban.

Even if we just took 1 product—1 of the 36, or 1 of the 5—we don't have to take the whole 36 or the whole 5—but just 1 of the products on the Customs Commissioner's product list and denied entry. I believe we could make a moral statement of the U.S. policy on this issue. I believe we must make that statement, and we can only do so through enforcement of existing laws.

If we believe in human rights, we must be willing to take a stand. In this case, we must be willing to enforce the current law. I want to again commend the committee for holding these hearings, and you, Senator, and Senator Moynihan and Senator Armstrong and I hope that you will pursue this matter in a way that will get the message through to the Department of Treasury, that the Congress is very serious about this. I might say I have sent a letter to Mr. Solzhenitzyn. I have not heard back from him, but it might be worthwhile for this committee to have Mr. Solzhenitzyn come and testify before the committee or, in addition to that, to have perhaps some of the people who have served time in these prison camps who now live throughout Europe and some in the United States, to come to tell you about their work and what products they were working on, to see if there could be a direct connection between what they say they have done recently and what is now being sold in the United States. And again, I thank you for this opportunity to testify.

Senator DANFORTH. Thank you, sir.

[The prepared written statement of Congressman Wolf follows:]

STATEMENT OF CONGRESSMAN FRANK R. WOLF

Mr. Chairman. Thank you for holding these hearings on a difficult and emotional issue involving the United States' involvement in importing goods made by slave labor in Soviet Union prisons. I appreciate your leadership on this issue and the opportunity to appear before your panel today.

Based on my discussions with Treasury and Customs officials before the House Appropriations Subcommittee on Treasury, Postal Service and General Government, it is my understanding that there are an estimated 4 million convict laborers in the U.S.S.R. Much of today's Soviet economy is built on the backs of those men, women, and children who toil in nearly 2000 Russian prisons and forced-labor camps. I think it is important to note that the Soviet Union is the only major industrialized nation that makes convict labor as a mainstay of its economy. Statistics and information like this are often difficult for Americans to understand. As my distinguished colleague from Colorado, Senator Bill Armstrong, has said, "Forced labor is a shameful situation beyond the comprehension of most Americans."

Americans cannot understand why a woman scrawling graffiti on a wall saying "You strangle our freedom, but you can't chain people's souls" would be imprisoned and put in camps for 3 years, during which time she worked 12 hour shifts. Nor can we understand how quota for work production during such shifts were set impossibly high and those who failed to meet them had their meager food rations cut.

Most U.S. citizens would be appalled knowing that a founder of a community of Catholic believers, who was considered a "subversive" for such action, would spend 15 years in prisons, camps and psychiatric hospitals for his actions.

The issue of forced labor is a particularly heinous one which runs so counter to the basic freedoms and rights of all people. And yet, it has become common practice in the Soviet Union. For example, when a big public project is in the works, the Soviet Union will increase arrests for "hooliganism" or "parasitism" (activities that we know in the U.S. as unemployment). Police round up men and women for the forced-labor pool, sometimes resorting to entrapment—like having an old lady ask a young man to try on a jacket to see if it would fit her son and then police promptly arrest the young man for shoplifting.

This type of violation of human rights is unconscionable, and yet it is common in Russia. Just as appalling is the fact the U.S. has become an accomplice in this crime against human rights by lack of enforcement of existing statutes prohibiting the importation of such products.

Section 307 of the 1930 Tariff Act states: "All goods, wares, articles, and merchandise, produced or manufactured wholly or in part in any foreign country by convict labor or forced labor . . . shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited." This, in effect, says the U.S. will, in no way participate or support the exploitation of people for the purpose of commerce and that such goods made by forced labor will not be accepted for entry into the U.S.

Enforcement of this ban on these goods falls under the jurisdiction of the United States Customs Service. The law states, "If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of 307 is being or is likely to be imported he will promptly advise all district directors accordingly and the district directors shall withhold release of any such merchandise pending further instructions." Clearly, the burden of proof, if such materials are seized, rests with the exporting country to prove that such goods are not the biproduct of forced labor.

By not enforcing the ban on slave labor, we open wide the door of commerce for unsuspecting Americans to financially support the actions of the Soviet Union when they purchase such goods.

For example, in 1983, the Commissioner of Customs compiled a list of 36 products suspected of being made by slave labor. That list, according to law, should have been enforced, but instead, officials at Treasury requested Customs to reduce the original list.

The list was shortened to five items including goods such as tea, tractor generators, gold ore, oil products and agricultural machines. For a variety of diplomatic, intelligence and security reasons, a decision was made in Treasury not to enforce a ban on these suspected products.

I understand the concerns that proving such goods are made by forced labor might compromise intelligence operations, however the burden of proof does not lie with the U.S., but with the country seeking to find a market for its good in the U.S.

I am deeply concerned about efforts to pick and choose which laws will and will not be enforced. And I am also disturbed by the Treasury Department's attitude toward this problem. From documents I have reviewed, it appears that the decision not to pursue or support enforcement of the ban on the Customs Commissioner's list of products appears to have been made on May 16, 1984—one day before a congressional subcommittee approved language withholding Treasury funds for any activity such as this which would prevent Customs from enforcing the ban. This apparent ploy to circumvent action expected by Congress does not advance the cause of human rights.

However, just four months ago on March 4, 1985, before the House Appropriations Subcommittee on Treasury and Postal Service, the Customs Commissioner again admitted that there was still a problem. He said, "In my view there are classes of items coming to the United States that are made in the Soviet Union with slave labor. It is my personal belief that there are such cases."

It's disturbing that this practice exists and our government is ignoring it. Because of my concerns, though, I offered the same rider included in last year's Treasury funding bill to the FY'86 Treasury/Postal Service appropriations bill during subcommittee mark-up two weeks ago. This rider would withhold funding of any activity or the payment of a salary to any individual preventing the Customs Service from enforcing this slave labor goods ban.

Even if we just took one product on the Customs Commissioner's product list and denied entry, I believe we could make a moral statement of U.S. policy on this issue. I believe we must make that statement and we can only do that through enforcement of existing laws.

If we believe in human rights, we must be willing to take a stand—in this case we must be willing to enforce the law. I want to again commend this Subcommittee for holding these hearings and Senator Armstrong for his leadership on this matter. I do not profess to be an expert on this matter but it is my hope that through these hearings on enforcement, interest and public attention can be brought to bear on the issue.

As Thomas Jefferson said, "One man with courage is a majority." We must have the courage to enforce these laws or else risk losing the respect of free men everywhere who look to the U.S. for leadership and protection of human rights throughout the world.

Senator DANFORTH. Congressman Hoyer.

STATEMENT OF HON. STENY HOYER, U.S. REPRESENTATIVE FROM THE STATE OF MARYLAND; COCHAIRMAN, HELSINKI COMMISSION

Congressman HOYER. Thank you, Senator. I am always pleased to be told who I am. Senator Danforth and Senator Moynihan, thank you very much for this opportunity to appear before you and testi-

fy on this very important subject along with my colleague, Senator D'Amato, Chairman of the Commission on Security and Cooperation in Europe, who testified earlier.

As Senator D'Amato previously highlighted the situation inside the Soviet Gulag is indeed tragic. Obviously, you know that and these hearings are the result. Soviet authorities attempt to hide this tragedy in the hope that it will go undetected. As chairman and cochairman of the Helsinki Commission, which monitors Soviet compliance with the Helsinki Final Act, and the Madrid Concluding Document, the Senator and I are well aware of the situation in the forced labor camps throughout the U.S.S.R. We are glad to see that other Members of the Congress take notice of what is happening there as well and are willing to support appropriate action, such as barring the importation of items made by forced labor in the Soviet Union.

The recent interest in Soviet forced labor practices, largely an outgrowth of the 1982 debate on the Urengoi—the Siberian gas pipeline—brought to our attention an otherwise little-known law, section 307, of the 1930 Tariff Act, known commonly as the Smoot-Hawley Tariff Act, which we are discussing today. This law states that all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by forced labor shall not be entitled to entry at any of the ports of the United States. Now, that seems relatively simple and straightforward.

We are all familiar with the efforts that have been made in support of this issue, particularly so because so many of them originated in this Congress. After Customs Commissioner William von Raab made his original recommendation to ban the import of 36 classes of Soviet merchandise from entry into the United States in late September 1983, Members of both the House and the Senate have written letters to him and to the former and current Treasury Secretary Donald Regan and James Baker, respectively, supporting the proposed ban and urging action.

In November 1983, the Helsinki Commission held a hearing on the subject, where the brutal forced labor system in the U.S.S.R. was thoroughly examined. And the Helsinki Commissioners expressed their desire for action on the ban. That same month, the House passed, by a vote of 402 to 0, House Concurrent Resolution 100, introduced by a fellow member of the Helsinki Commission, Representative Chris Smith of New Jersey, which states that the use of forced labor is morally reprehensible and calls upon the Soviet Union to end such practices. Other resolutions have been introduced calling the delay in enforcement unacceptable to the Congress and urging the Secretary of the Treasury, and I quote, "to end the delay in enforcing this provision and to act immediately to prohibit the importation of such goods."

In addition, Mr. Chairman, last year I added a rider to the Treasury Appropriation bill which denies funds for activities that would result in an action "that would prohibit or otherwise prevent the Customs Service from enforcing section 307 of the 1930 Tariff Act." As you heard earlier, my distinguished colleague from Virginia, and good friend Frank Wolf, introduced that same provision in the Treasury-Postal Service Subcommittee this year, which I supported

very vigorously, and which was adopted by the subcommittee, and I am sure will be adopted by the full committee in the 1986 Postal-Treasury Appropriation bill.

Despite, however, these efforts, the Treasury Department has continually delayed making any decision to enforce the law and invoke the ban, even though 84 Members of the House took further action by sending a legal petition to the Customs Service requesting that the Commissioner take the preliminary step as required by the relevant regulations of withholding those goods for which there is reasonable though not conclusive evidence that they were made by forced labor. We still have not seen positive action by the Treasury. Many of these petitioners decided to pursue the matter further through the courts. I am sure that other witnesses will comment extensively on this action.

With all of this activity on the Hill, Mr. Chairman, not to mention support for the ban that comes from various human rights groups as well as from concerned citizens from all parts of this country, one would think that action would be taken on Commissioner von Raab's recommendations that certain items be barred from import into the United States because they were made with the utilization of forced labor in the Soviet Union.

Nevertheless, the Administration has consistently refused to do so. Officials from the Treasury, Commerce, and State usually cite two reasons for not enforcing that ban. First, they say that there is a lack of sufficiently specific and conclusive evidence that the items being imported are actually being produced with forced labor. Second, they express concern over the trade and foreign policy implications of the proposed ban. I would like to briefly address these two arguments.

In regard to the need for more specific evidence, naturally it is everyone's desire to have information as specific as possible. Clearly, we in this country believe that that is a necessary due process requirement. Due to the closed nature of the Soviet system, however, this is extremely difficult. Secretary Schultz recently mentioned this when asked about the ban, saying that it was a difficult task to identify goods made by forced labor and then pick those goods out of the flow of the total goods imported by the United States, whether they come from the Soviet Union or from some other country. However, it is my opinion that the degree of specificity needed to invoke a ban has been greatly overstated.

According to the relevant regulations defining the procedures the Commissioner of Customs is to follow in enforcing section 307, if there is credible evidence that certain classes of merchandise are made by forced labor in a particular country, and if the United States is importing or even likely to import items from that country that fit into those classes, then by law those items should be banned. Legally, it is then the responsibility of the importer to establish, and I quote: "by satisfactory evidence that the merchandise was not mined, produced or manufactured in any part with the use of a class of labor specified in the finding."

Currently, there is sufficient credible evidence that certain goods are made with forced labor in the Soviet Union so as to allow, in my opinion, the Customs Commissioner to use reasonably narrow classifications and ban their importation.

While critics of the ban most often focus on the issue I have just addressed, they often also allude to their concern over the implication of the ban on U.S. foreign and trade policy. One State Department official, in fact, told the Congress at the 1983 Commission hearing that the United States might be seen as waging economic warfare. Considering the conditions in the gulag and how the existence of such a system violates international law, as has been previously detailed by Senator D'Amato, and considering the fact that the value of the goods affected by the ban is such that it will have no real impact on either the United States or the Soviet economy, it is difficult to accuse the United States of economic warfare.

I believe, Mr. Chairman, that enforcing the law by invoking a ban on the Soviet goods made with the utilization of forced labor will send a most appropriate signal to the Soviet leadership. It will tell them that, while the United States seeks dialog and agreement on a wide range of issues in our bilateral relations, we will not assist in the perpetuation of the gulag system by importing goods made there. No other message, Mr. Chairman, I suggest ought to be sent by this country to the Soviet Union or the rest of the world.

More importantly, however, I believe that it should be remembered that section 307 of the 1930 Tariff Act is after all the law. It is the duty of the administration to enforce the laws. If the administration believes that this law is detrimental to U.S. interests, then administration officials should recommend the law be revoked or amended. As a matter of fact, let me say that the administration did recommend that my prohibition in the Treasury-Postal Service bill and now the Wolf prohibition in the Treasury bill be deleted. But surely, this administration should not ignore that language and the law's existence or make its existence meaningless.

Mr. Chairman, I congratulate you, Senator Moynihan, and the others of this subcommittee for these hearings, for your focus on this issue, and urge such specific action as you deem to be reasonable, proper and effective. Thank you very much.

Senator DANFORTH. Thank you, gentlemen, very much.

[The prepared statement of Congressman Hoyer follows:]

STATEMENT OF REPRESENTATIVE STENY HOYER, COCHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. Chairman and members of the subcommittee, I appreciate your allowing me to appear before you today as Co-chairman of the Commission on Security and Cooperation in Europe in order to express my views along with the Commission's Chairman, Senator Alfonse D'Amato, on forced labor in the Soviet Union and a ban on the U.S. importation of products made with that labor.

As Senator D'Amato has just highlighted, the situation inside the Soviet Gulag is indeed tragic. Soviet authorities attempt to hide this tragedy in the hope that it will go undetected. As Chairman and Co-Chairman of the Helsinki Commission, which monitors Soviet compliance with the Helsinki Final Act and the Madrid Concluding Document, the Senator and I are well aware of the situation in the forced labor camps throughout the U.S.S.R. We are glad to see that other members of the U.S. Congress take notice to what is happening there as well and are willing to support appropriate action, such as barring the importation of items made by forced labor in the Soviet Union.

The recent interest in Soviet forced labor practices, largely an outgrowth of the 1982 debate on the Urengoi gas pipeline, brought to our attention an otherwise little-known law, section 307 of the 1930 Tariff Act, known commonly as the Smoot-Hawley Tariff Act, which we are discussing today. This law states that all goods, wares, articles and merchandise mined, produced or manufactured wholly or in part

in any foreign country by forced labor shall not be entitled to entry at any of the ports of the United States.

We are all familiar with the efforts that have been made in support of this issue, particularly because so many of them originated in the Congress. Afer Customs Commissioner William von Rabb made his original recommendation to ban the import of 36 classes of Soviet merchandise from entry into the United States in late September 1983, members of both the House and the Senate have written letters to him and to the former and the current Treasury Secretary, Donald Regan and James Baker respectively, supporting the proposed ban and urging action.

In November 1983, the Helsinki Commission held a hearing on the subject, where the brutal forced labor system in the U.S.S.R. was thoroughly examined and Helsinki Commissioners expressed their desire for action on the ban. That same month, the House passed by a vote of 402–0 House Concurrent Resolution 100, introduced by a fellow member of the Helsinki Commission, Representative Chris Smith of New Jersey, which states that the use of forced labor is morally reprehensible and calls upon the USSR to end such practices. Other resolutions have been introduced, calling the delay in enforcement unacceptable to the Congress and urging the Secretary of the Treasury "to end the delay in enforcing this provision, and to act immediately to prohibit the importation of such goods."

In addition, Mr. Chairman, last year I added a rider to the Treasury appropriation bill which denies funds for activities that would result in an action "that would prohibit or othewise prevent the Customs Service from enforcing section 307 of the 1930 Tariff Act." The same provision was introduced this year by my distinguished friend and colleague from Virginia, Congressman Wolf. Both provisions passed unanimously in Committee.

Despite these efforts, the Treasury Department has continually delayed making any decision to enforce the law and invoke the ban. Even though eighty-four Members of the House took further action by sending a legal petition to the Customs Service, requesting that the Commissioner take the preliminary step of withholding those goods for which there is reasonable but not conclusive evidence that they were made by forced labor, as required by the relevant regulations, we still have not seen positive action by Treasury. Many of these petitioners decided to pursue the matter further through the courts. I am sure that other witnesses will comment extensively on this action.

With all of this activity on the Hill, not to mention the support for the ban that comes from various human rights groups as well as from concerned citizens from all parts of this country, one would think that action would be taken on Commissioner von Raab's recommendation that certain items be barred from import into the United States because they were made with the utilization of forced labor in the Soviet Union.

Nevertheless, the Administration has consistently refused to do so. Officials from the Treasury, Commerce and State Departments usually cite two reasons for not enforcing the ban. First, they say that there is a lack of sufficiently specific and conclusive evidence that the items being imported are actually being produced with forced labor. Second, they express concern over the trade and foreign policy implications of the proposed ban. I would like to briefly address these two arguments.

In regard to the need for more specific evidence, naturally it is everyone's desire to have information as specific as possible. Due to the closed nature of the Soviet system, this is very difficult. Secretary Schultz recently mentioned this when asked about the ban, saying that it was a difficult task to identify goods made by forced labor and pick those goods out of the flow of total goods imported by the United States, whether they come from the Soviet Union or from some other country.

However, it is my opinion that the degree of specificity needed to invoke a ban has been greatly overstated.

According to the relevant regulations defining the procedures the Commissioner of Customs is to follow in enforcing section 307, if there is credible evidence that certain classes of merchandise are made by forced labor in a particular country, and if the United States is importing, or even likely to import, items from that country that fit into those classes, then by law those items should be banned. Legally, it is then the responsibility of the importer to establish "by satisfactory evidence that that particular entry of merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding."

Currently there is sufficiently credible evidence that certain goods are made with forced labor in the Soviet Union so as to allow the Customs Commissioner to use reasonably narrow classifications and bar their importation.

While critics of the ban most often focuses on the issue I have just addressed, they often allude to their concern over the implications of the ban on U.S. foreign and

trade policy. One State Department official, in fact, told the Congress at the 1983 Commission hearing that the United States might be seen as waging economic warfare. Considering the conditions in the Gulag and how the existence of such a system violates international law, as detailed by Senator D'Amato, and considering the fact that the value of the goods affected by the ban is such that it will have no real impact on either the U.S. or the Soviet Economy, it is difficult to accuse the United States of economic warfare or look upon the ban in a negative fashion.

I believe that enforcing the law by invoking a ban on Soviet goods made with the utilization of forced labor will send a most appropriate signal to the Soviet leadership. It will tell them that, while the United States seeks dialogue and agreement on a wide range of issues in our bilateral relations, we will not assist in the perpetuation of the Gulag system by importing goods made there. No other message should be sent.

More importantly, however, I believe that it should be remembered that section 307 of the 1930 Tariff Act is the law. It is the duty of the Administration to enforce the laws. If the Administration believes that this law is detrimental to U.S. interests, Administration officials should recommend that the law be revoked or amended, but surely they should not ignore its existence or attempt to make its existence meaningless.

Thank you, Mr. Chairman.

Senator DANFORTH. I take it both of you feel that the nonenforcement of section 307 is not the result of any practical problem, but rather is the result of a policy decision.

Congressman HOYER. Senator, if I might answer that question. I do believe that Commissioner von Raab, Secretary Regan and Secretary Baker—Secretary Regan more so because Secretary Baker was new when he testified before the Treasury-Postal Service Subcommittee and the Appropriations Committee—do have some substantive problems with enforcing section 307. I do not accuse them of simply ignoring, without some degree of rationality, the provision. However, I do believe that they are incorrect in their policy analysis and unfortunately incorrect in the message they send to the rest of the world by not enforcing this provision of the law.

Senator DANFORTH. Congressman Wolf?

Congressman WOLF. I have been told that there is information that the CIA has. I am not on the Intelligence Committee, but I know that Senator Moynihan is. Perhaps you might ask to see that information. There has been some concern that information they have would compromise intelligence sources, but I think there has been a lack of commitment to really nail this one down.

Congressman HOYER. Thank you very much.

Senator DANFORTH. Thank you. Senator Moynihan, do you have any questions?

Senator MOYNIHAN. I just wanted to say that the suggestion that we seek out the testimony or somewhere the witness of people who have actually been in those camps—what did they do? That this, for us, is some information that I don't think has really been explored. We thank you both, gentlemen, very much.

Congressman HOYER. Senator, I heard Congressman Wolf make that suggestion, and I concur in it. It is an excellent suggestion. Senator D'Amato and I would make available to the extent possible such information as we have in our relatively extensive files at the Helsinki Commission of individuals who might have information helpful to the committee's deliberations.

Senator DANFORTH. We will have one such person this afternoon. Gentlemen, thank you very much.

Congressman HOYER. Thank you very much.

Congressman WOLF. Thank you.

Senator DANFORTH. The next witnesses are Commissioner William von Raab of the U.S. Customs Service, and Mark Palmer, Deputy Assistant Secretary of the Bureau of European and Canadian Affairs of the Department of State. Commissioner, would you like to start?

Commissioner VON RAAB. Yes, Senator, if I may.

STATEMENT OF HON. WILLIAM VON RAAB, COMMISSIONER, U.S. CUSTOMS SERVICE

Commissioner VON RAAB. Senator, may I ask that Mr. John Simpson come up and join me? He is the Director of our Office of Regulations and Rulings, and he has worked extensively on this issue?

Senator DANFORTH. Fine. Thank you.

Commissioner VON RAAB. Mr. Chairman, and members of the subcommittee, I am pleased to be here today to discuss the role of the United States Customs Service in enforcing the prohibition on importation of goods made by use of forced labor. As you well know, this prohibition appears in section 1307 of title 19 of the United States Code.

The procedure that Customs will follow in enforcing this law is described in the Customs regulations, 19 CFR 12.42 and following. Essentially, these regulations provide that if I, as the Commissioner of Customs, receive information which reasonably but not conclusively indicates that merchandise made with the use of forced labor is being imported into the United States, then I must promptly direct Customs field officials to withhold entry of that merchandise.

As you may know, on September 15, 1983, Senator Armstrong published in the Congressional Record a letter he had received from the Director of Central Intelligence, attached to which was a list of "Soviet industries which utilize forced labor and produce goods for export." The attachment described the list as being "industries and products in which forced labor is used extensively." Let me review briefly what has happened since then.

Immediately upon this list being called to my attention, I directed that an order be prepared denying entry of any of the listed goods imported from the Soviet Union. Because of the potential impact of this order, it was my judgment that I should publish a public notice of the action. Consequently, I prepared a notice for publication in the Federal Register, and on September 28, 1983, I submitted that notice to the Treasury Department for approval, as I am required to do.

In February 1984, after I had consulted with Treasury officials on standards to be used in invoking the forced labor law, and after I had an opportunity to review a detailed synopsis of the intelligence on which the CIA letter was based, I submitted to Treasury a revised notice with a list of goods which was substantially shortened, including only those goods for which the CIA indicated it had fairly recent intelligence from reliable sources.

However, on February 1, 1984, the International Trade Commission at the request of the Senate Committee on Finance began a

broad investigation into U.S. imports from all sources of goods made with forced labor, and on March 2, the chairman of the committee, Senator Dole, asked the Secretary to defer any action on our preliminary findings until the ITC could complete its comprehensive review of forced labor imports generally.

Subsequently, in May 1984, the Central Intelligence Agency informed Treasury that a review had been conducted of the evidence on the production and export of goods manufactured by forced labor and that it had been found to be fragmentary and not very specific. Based upon the CIA's views and pending completion of the ITC study, the Secretary at that time postponed a decision on this matter. On January 17, the Director of Central Intelligence wrote to the Secretary to advise him that, despite continued monitoring, the CIA was unable to obtain sufficient facts to make a solid case that any particular good we received from the Soviet Union is made with forced labor.

After receiving this advice from the Director of Central Intelligence and after reviewing the report of the International Trade Commission, which provides no additional evidence which might support a decision to prohibit the importation of certain goods from the Soviet Union, Customs and Treasury have concluded that we do not currently have adequate evidence to link the forced labor operations in the Soviet Union with merchandise which is imported here from the Soviet Union.

This is where matters stand at this moment. The Customs Service remains very concerned about reports coming to us that the use of forced labor in the Soviet Union continues to be substantial and that forced labor is used in the manufacture of goods of a type which are imported here from the Soviet Union.

However, in applying the forced labor law against a closed society, such as the Soviet Union, we are highly dependent on our intelligence agencies for information which will provide us with a solid basis for acting. If such information is not available or if our intelligence experts are of the opinion that the information available is not reliable, then we shall not be able to act.

Thank you, Mr. Chairman, for giving me the opportunity to be here today to explain Customs' role in enforcing this important law. I, of course, will be pleased to answer any questions you may have.

Senator DANFORTH. Thank you, sir.

[The prepared statement of Commissioner von Raab follows:]

STATEMENT OF HON. WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS

Mr. Chairman and members of the Subcommittee, I am pleased to be here today to discuss the role of the U.S. Customs Service in enforcing the prohibition on importation of goods made by use of forced labor. As you know, this prohibition appears in Section 1307 of Title 19 of the U.S. Code.

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After receiving this advice from the Director of Central Intelligence, and after reviewing the report of the International Trade Commission, which provides no additional evidence which might support a decision to prohibit the importation of certain goods from the Soviet Union, Customs and Treasury have concluded that we do not currently have adequate evidence to link the forced labor operations in the Soviet Union with merchandise which is imported here from the Soviet Union.

That is where matters stand at this moment. The Customs Service remains very concerned about reports coming to us that use of forced labor in the Soviet Union continues to be substantial, and that forced labor is used in the manufacture of goods of a type which are imported here from the Soviet Union.

However, in applying the forced labor law against a closed society such as the Soviet Union, we are highly dependent on our intelligence agencies for information which will provide us with a solid basis for acting. If such information is not available, or if our intelligence experts are of the opinion that the information available is not reliable, then we shall not be able to act.

Thank you, Mr. Chairman, for giving me the opportunity to be here today to explain Customs' role in enforcing this important law. I shall be pleased to answer any questions you may have.

Senator DANFORTH. Mr. Palmer.

STATEMENT OF MARK PALMER, DEPUTY ASSISTANT SECRETARY, BUREAU OF EUROPEAN AND CANADIAN AFFAIRS, DEPARTMENT OF STATE

Mr. PALMER. Thank you, Mr. Chairman. I would like to summarize briefly my statement. The use of forced labor in the Soviet Union is a human rights issue of great concern to this administration, as we have repeatedly and forcefully made clear in public statements.

Soviet authorities exploit such labor on a large scale, as we made clear in our reports to the Congress in November 1982 and our final report of February 1983, and as the International Trade Commission's report which Chairman Stern has just reviewed with you makes clear—a report that, as she mentioned, we had a substantial

role in. We estimate that some 4 million Soviet citizens—about 1.5 percent of the entire population of the Soviet Union—are now serving sentences of forced labor. About 2 million of these are confined—85 percent in forced labor camps and the remainder in prisons. The remaining 2 million forced laborers are unconfined parolees or probationers. Among these forced laborers are dissidents or political prisoners, perhaps as many as 10,000 of them according to Dr. Sakharov and to Amnesty International. A former Soviet official reports that the Ministry of Internal Affairs records listed 10,358 political prisoners in early 1977.

Due to the closed nature of Soviet society, our information on the operation of the Soviet forced labor system is much less complete than we would like, as Commissioner von Raab has just mentioned. One area in which the gap in our knowledge is considerable concerns distribution of products of the forced labor system once they leave the camps. And I won't repeat, but in my testimony I also cite Director Casey's various letters to the Treasury Department which detail the problems that we have with the evidence. I think, however, we all can agree that existing U.S. law, specifically section 307 of the Tariff Act of 1930, applies where we have relatively specific information that a particular product is being made in a particular location with forced labor.

In addition, in deciding whether to enforce section 307 in a particular instance, we should be guided by objective criteria uniformly applied to all countries. The existence of such a standard of proof is consistent with the well-established legal principle against selective enforcement. The need to follow uniform objective criteria is especially important since the application of section 307 involves not only human rights issues but sensitive trade and other considerations as well.

I would like just to mention that, among these considerations, we should keep in mind what the Soviet response might be. We recognize the rewards of mutually beneficial trade in nonstrategic items with the Soviet Union as long as it is in harmony with our overall political and strategic objectives. It is for this reason that we have supported nonstrategic trade with the Soviet Union, which provided U.S. exporters with a $2.7 billion trade surplus in 1984, mostly accounted for by grain sales.

As I noted at the outset, this administration regards Soviet forced labor practices as a human rights issue of great concern. We welcome these hearings and we welcome attention to this issue. We fully intend to enforce domestic law designed to eliminate any subsidization of forced labor in the Soviet Union or elsewhere. The judicious enforcement of section 307 in accordance with objective and uniform criteria is not only consistent with the well-established principle against selective enforcement, but also advances important foreign policy and national security interests. Thank you, Mr. Chairman.

Senator DANFORTH. Gentlemen, thank you very much.

[The prepared written statement of Mr. Palmer follows:]

PREPARED STATEMENT OF MARK PALMER, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF EUROPEAN AND CANADIAN AFFAIRS

Thank you for the opportunity to appear before this committee today to address Soviet forced labor practices. The use of forced labor in the U.S.S.R. is a human rights issue of great concern to this administration, as we have made clear repeatedly in our public statements.

While Soviet forced labor practices have changed significantly since Stalin's day, Soviet authorities still exploit such labor on a large scale. The Soviet forced labor system gravely infringes internationally recognized fundamental human rights. Forced labor is one of the key instruments with which Soviet authorities repress dissent and maintain their status quo. We must bear in mind this larger human rights issue posed by the existence of the Soviet forced labor system as I focus my discussion today upon the problem of Soviet economic exploitation of their forced labor system.

As mandated by the Congress, the Department of State and other interested executive branch agencies carefully examined the information on Soviet forced labor practices available to us. As a result of that examination, we have made several reports to the Congress, an interim document in November 1982, and a final report in February 1983. In addition, the International Trade Commission submitted a report concerning international forced labor practices to this committee last December.

While correctional labor colonies were first established by the Soviet regime in 1919, the system grew slowly until Stalin assumed power. Under Stalin, the forced labor system reached its peak population of some 15 million persons in 1947. After Stalin's death the camp population was reduced. Toward the end of the Khrushchev era, criminal penalties, particularly for so-called "economic crimes", were toughened, and the camp system began to expand again. Criminal charges were used increasingly to control political dissidents. We estimate that some four million Soviet citizens—about 1.5 percent of the population—are now serving sentences of forced labor. About two million of these are confined, 85 percent in forced labor camps and the remainder in prisons. The remaining two million forced laborers are unconfined parolees or probationers.

Among these forced laborers are dissidents (political prisoners), perhaps as many as 10,000, according to Nobel Prize Laureate Andrey Sakharov and Amnesty International. A former Soviet official reports that Ministry of Internal Affairs records listed 10,358 political prisoners in early 1971. Soviet dissidents fall into several categories: Refuseniks (those refused permission to leave the USSR), religious nonconformists, human and civil rights activists, Russian and other ethnic nationalists, and discontented workers.

Throughout its history, the Soviet regime has attempted to derive some economic benefit from this substantial prisoner population, Indeed, this practice was widely used by the predecessor Czarist regime as well. As former Under Secretary of State Lawrence Eagleburger stated in a letter which accompanied our report to Congress in February 1983: "Forced labor, often under harsh and degrading conditions, is used to execute various Soviet developmental projects and to produce large amounts of primary and manufacured goods for both domestic and Western export markets".

Due to the closed nature of Soviet society, our information on the operation of the Soviet forced labor system is much less complete than we would like. One area in which the gap in our knowledge is considerable concerns distribution of products of the forced labor system once they leave the camps. As director of Central Intelligence Casey noted in a 1983 letter which was printed in the Congressional Record, "While we have done extensive research on this question for many years, we cannot determine the exact magnitude of the contribution forced labor makes to the total output in each industry, nor can we give you a list of brand names or products". After further study of this question, Director Casey stated in May 1984 in a letter to then Treasury Secretary Regan that the agency was unable to determine whether and to what extent the products of forced labor are exported to the United States.

I think we can all agree that existing U.S. law, specifically section 307 of the Tariff Act of 1930, applies where we have relatively specific information that a particular product is being made in a particular location with forced labor. The application of our law is far more difficult when we have only general information that forced labor is being employed within certain sectors of an economy. General information of this type does not permit us to identify those specific articles whose importation would violate U.S. law. An additional problem concerns the exent to which an entire category of goods should be banned when the information we have suggests that only a small and unspecified percentage of those goods was produced with forced labor.

In deciding whether to enforce section 307 in a particular instance, we should be guided by objective criteria uniformly applied to all countries. The existence of such a standard of proof is consistent with the well-established legal principle against selective enforcement. The need to follow uniform, objective criteria is especially important, since the application of section 307 involves not only human rights issues, but sensitive trade and foreign policy considerations as well. The selective enforcement of section 307, or its enforcement in the absence of sufficiently detailed and reliable evidence, could be considered by our allies and by the Soviets as an attempt to wage economic warfare against the USSR. This perception could substantially impair our efforts to coordinate east-west trade policies with our allies. Therefore, we need to take into account our larger interests in consolidating a unified and firm allied position on trade towards the Soviet Union. We must also keep in mind the likely Soviet response.

Economic warfare is not the policy of this administration. Despite the downturn in our overall relationship in recent years and our sanctions related to events in Afghanistan and Poland. We have maintained the key elements of our structure for trade with the Soviet Union. We recognize the rewards of mutually beneficial trade in nonstrategic items as long as it is in harmony with our overall political and strategic objectives. It is for this reason that we have supported non-strategic trade with the Soviet Union, which provided U.S. exporters with a $2.7 billion trade surplus in 1984, mostly accounted for by grain sales.

As I noted at the outset, this administration regards Soviet forced labor practices as a human rights issue of great concern. We fully intend to enforce domestic law designed to eliminate any subsidization of forced labor—in the Soviet Union or elsewhere. The judicious enforcement of section 307 in accordance with objective and uniform criteria is not only consistent with the well-established principle against selective enforcement, but also advances important foreign policy and national security interests.

The Department of the Treasury's decision not to prohibit the importation into the United States of any goods produced within the Soviet Union was made only after the careful consideration of all available evidence failed to establish a connection between Soviet forced labor practices and specific imports from the Soviet Union. This evidence included the International Trade Commission report as well as information provided by the intelligence community and reports prepared by our embassies. We share your concern about the use of forced labor by the Soviet Union. Our condemnation of the use of forced labor by the Soviet Union, however, does not mean the administration should take enforcement actions without clear, substantive evidence that specific products of slave labor are actually being imported into the United States.

Senator DANFORTH. Now, is there any doubt in either of your minds that forced labor is being conducted in the Soviet Union?

Commissioner VON RAAB. No, not in mine.

Mr. PALMER. No. No doubt.

Senator DANFORTH. And that products are being made or minerals are being produced in those forced labor camps?

Commissioner VON RAAB. No.

Mr. PALMER. None.

Senator DANFORTH. And are some of those goods or minerals finding their way into the export market?

Commissioner VON RAAB. That is where the difficulty comes up. Basically, two findings, as I understand it, must be made. One is that a class of goods which we have, with the Treasury Department, determined would be the lowest classification of goods recognized by the Tariff Act, is made with forced labor. Or, I could quote the law, that "there is information which reasonably but not conclusively indicates that this class of goods"—and I am substituting that for merchandise—"is made with the use of forced labor." That is first what we have to find out. And then, second, which is a lot easier, is that class of goods imported into the United States. Now, the tough part is being able to develop evidence that reasonably indicates that the merchandise or this class of goods is made in the

Soviet Union with the use of forced labor. And that is where we have failed.

Senator DANFORTH. Let me just see if I can understand before we get to any practical problems of enforcement. You speak in your testimony, Mr. Palmer, of the fact that section 307 should be enforced where we have relatively specific information that a particular product is being made in a particular location with forced labor. And then you say, on page 5 of your testimony; "Since the application of section 307 involves not only human rights issues but sensitive trade and foreign policy considerations as well . . ." Is the nonenforcement of section 307 strictly a result of practical problems of determining where a product is made or mined and whether it is getting into the U.S. market, or instead, is the lack of enforcement of Section 307 related to various policy concerns—foreign policy considerations, sensitive trade matters, and so on?

Mr. PALMER. No, it is the first, Senator. If we had clear evidence of specific products being produced that were then being imported into the United States, we, the State Department, would argue strenuously for enforcement. It is only in the absence of that that we think it is important to point out the foreign policy and trade implications of proceeding without that evidence because we would then have a difficult time, for example, with our allies in explaining——

Senator DANFORTH. A decision has not been made within the administration or within the State Department to go light on section 307 or go light on the Soviet Union?

Mr. PALMER. Not at all.

Senator DANFORTH. It is, as far as you are concerned, simply a question of the practicality of enforcement.

Mr. PALMER. That is correct.

Senator DANFORTH. Do you agree with that, Commissioner?

Commissioner VON RAAB. I wouldn't use the word "practicality" of enforcement. I think that the statute is very practical. It has to do with the ability to marshal the facts upon which a decision would be made.

Senator DANFORTH. All right. Do you agree with Mr. Palmer that the nonenforcement of section 307 is the result not of some policy decision but, rather, a result of the inability to marshal facts?

Commissioner VON RAAB. I do not sit in on those meetings. I can only tell you that from my perspective as Commissioner of Customs the factual basis upon which I was prepared to make a decision was subsequently described by the Director of Central Intelligence as being insufficient.

Senator DANFORTH. After the original information came from the CIA?

Commissioner VON RAAB. Don't forget—the original information was presented to me in a synopsis, in other words, and I cannot go into the specifics, but I did not—we all remember from college—I did not review the primary sources. I was given the secondary sources—the analysis of that—and, therefore, I am not in a position personally to characterize the credibility of those primary sources.

Senator DANFORTH. When a product arrives in the United States—when it arrives at the border—is the Customs Service able to discern the origin of that product?

Commissioner VON RAAB. Do you mean which country?

Senator DANFORTH. Which country and whether or not it was made in some camp?

Commissioner VON RAAB. Let me break that into two. One is that in most cases, we are able to discern the origin of the product. I mean, obviously, there are times when it can be hidden in some way or the other, but I doubt that any of these products would be hidden. The issue is not a physical examination at the border of merchandise that carries with it evidence of forced labor production. The issue is whether I have received sufficient information to conclude that that class of goods is made in the Soviet Union with the use of forced labor. If I believe that that class of goods is made with forced labor, whether or not the specific physical item that is delivered at the border is or was made by forced labor is irrelevant. It is whether it is a part of the class of goods that is made by forced labor.

Senator DANFORTH. In other words, in the case of, say, a petroleum product, if you had evidence that 5 percent of the Soviet Union's output of that particular product was manufactured by forced labor, you would exclude all of it that arrived at our border.

Commissioner VON RAAB. The introduction of the 5 percent makes it a little more difficult to answer the question. Basically, it is that if that class of goods is m;anufactured in the Soviet Union with the use of forced labor, parenthetically, that it is not just a de minimus amount of that product——

Senator DANFORTH. All right. Let's say 20 percent.

Commissioner VON RAAB. That certainly is not de minimus.

Senator DANFORTH. Then you would keep it all out?

Commissioner VON RAAB. Everything that fell under that tariff classification.

Senator DANFORTH. All right. Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, may I first say that, unaccustomed as I am to being invited to the White House these days, I have been asked to be there for the signing of a Statue of Liberty gold coin. So, I am going to leave in a short time. I wanted to say two things. First of all, to you, Mr. Palmer, in particular, and to Mr. von Raab as well, there is a curious absence of the People's Republic of China from this whole hearing. I mean, things are not supposed to happen in China because they are good totalitarians. Right?

Commissioner VON RAAB. You said it. I didn't.

Senator MOYNIHAN. But I don't see a word in either of your testimonies that mentions China.

Mr. PALMER. I think, Senator, in the last hearings on these, we did discuss the problem with regard to China and perhaps we had a misunderstanding of what your interests were. We would be happy to provide you information on the Chinese dimension.

Senator MOYNIHAN. Would you, please, because there is an asymmetry.

[The prepared information follows:]

There are no official statistics available on the total prison population in China, but one source, cited in the International Trade Commission's December 1984 report on international compulsory labor practices, estimates it to be at least three to four million persons. The PRC Government regards work as the key factor in the "reeducation" of minor offenders and the "reform" of criminals.

Compulsory labor in China tends to be used for unskilled jobs in agriculture, industry, mining, and construction. China remains largely an agrarian society, and USG sources estimate that about 75 percent of the total prison population is engaged in agricultural production. Agricultural output produced by compulsory labor is believed to be consumed locally, partly because of the level of development of China's transportation facilities.

Compulsory labor used in industry and mining is usually involved in unskilled jobs making products for markets where quality is not the most important factor. USG sources estimate that no more than one-fourth of the prison population are engaged in industrial and mining activities. Some of the articles produced by compulsory labor are of a type that is exported. However, the USG has no direct evidence that goods produced by compulsory labor in China are exported to the U.S., although the ITC speculated that a portion of such goods might enter the U.S.

Commissioner VON RAAB. If I might say there, Senator, with respect to the Soviet Union, information was brought to my attention related to the Soviet Union.

Senator MOYNIHAN. Right. I get you, sir. Now, I take it that you read something in the Congressional Record by Mr. Armstrong which came from the Central Intelligence Agency, and immediately upon this listing being called to your attention, you drew up a list of goods that would be banned, and then you were told "no." You were overruled.

Commissioner VON RAAB. No, that is not accurate.

Senator MOYNIHAN. All right. What is accurate?

Commissioner VON RAAB. I prepared a document of findings which would be sent out to Customs district directors based upon the letter that was sent to Senator Armstrong.

Senator MOYNIHAN. Yes.

Commissioner VON RAAB. At that point, the Treasury Department, in reviewing the document that I sent over, and the letter, made further inquiries of the Central Intelligence Agency and also asked me to prepare, along with the Treasury Department, a set of criteria that would be applied in this case as well as in future cases so that we would have a uniform application. We did not have those criteria at the time. The criteria were developed and, then, based upon the more complete information from the Central Intelligence Agency and the application of the criteria that were jointly prepared between Treasury and Customs, a shorter list was developed.

Senator MOYNIHAN. Is it your impression that Senator Armstrong was misled by the Central Intelligence Agency?

Commissioner VON RAAB. No, I wouldn't say that. I would say that, based upon the criteria that were developed, the range of items listed there did not have the kind of information that was necessary. It had to do with the recent nature of the information. It had to do with the specificity of the information.

Senator MOYNIHAN. How can we find this out? Mr. Chairman, Senator Armstrong is very concerned, and he thought he had information from the CIA and they thought they did, too. Then, it turned out they got different information, or something happened, the consequence of which nothing happened. Shouldn't we ask the agency to give us the second set of information? What do you

think? If they can pass it around the Customs Service, they can pass it around the Finance Committee.

Senator DANFORTH. I don't know. Commissioner von Raab is relying on secondary information from the CIA. You have no basis of understanding what their threshold of evidence was?

Commissioner VON RAAB. Yes; I am not trying to be cute here, but it was classified information, and I would be more than happy at this point in time or at any other time to discuss in detail the character of this information, but as it was classified, I would prefer to do it under a nonpublic hearing.

Senator MOYNIHAN. Sure. But you do recognize don't you that at one point the CIA provided material to Senator Armstrong, and it made him think you were going to do something about it. And then, a period goes by, and you get some other information from the CIA that says, well, we can't do anything about it or shouldn't. I find this confusing, don't you?

Commissioner VON RAAB. It is explainable.

Senator MOYNIHAN. Can you see why we would want to know more?

Commissioner VON RAAB. Yes; I can see that it would appear to be confusing.

Senator MOYNIHAN. Mr. Chairman, could we ask—and we can consult with Senator Armstrong on this—and see if we shouldn't ask for a private meetlng to look at that material? Would that be sensible to you?

Senator DANFORTH. I think we should discuss it with Senator Armstrong.

Senator MOYNIHAN. Obviously, something happened, the consequence of which nothing happened. Thank you.

Senator DANFORTH. Let me ask you this, Commissioner: Who makes the decision whether there is sufficient evidence of a product being made by forced labor to warrant the exclusion of the product?

Commissioner VON RAAB. I do.

Senator DANFORTH. Yes; however, in this case, what you did was to rely upon the judgment of the CIA?

Commissioner VON RAAB. I relied upon certain evidence that the CIA provided to me.

Senator DANFORTH. Then it wasn't just asking the CIA if they thought that this was sufficient evidence, but you asked——

Commissioner VON RAAB. No, I drew the conclusion based upon the evidence. The evidence was in no way designed to cause me to go to one conclusion or the other. It was just basically a synopsis of a number of—I guess you would call them—collections of one type or the other.

Senator DANFORTH. Right, but I mean you weren't relying on conclusions by anybody else. You were relying on information that came from the CIA. It was digested information, but it was information that came from the CIA.

Commissioner VON RAAB. That is correct.

Senator DANFORTH. So, the decision on whether or not the evidence was adequate was your decision?

Commissioner VON RAAB. Yes.

Senator DANFORTH. What is the standard of proof that you apply?

Commissioner VON RAAB. Reasonably but not conclusively that it was made by the use of forced labor.

Senator MOYNIHAN. Mr. Chairman, would you mind my interrupting there to say that I looked at that—and I have got it right, don't I?—reasonably but not conclusively?

Commissioner VON RAAB. Yes, sir.

Senator MOYNIHAN. What if you found out it was conclusively? Would you be precluded?

Commissioner VON RAAB. No.

Senator MOYNIHAN. I know, you didn't write the regulation, but it could be a little better drafted—whoever did it.

Senator DANFORTH. But the meaning in your understanding is that reasonably but not conclusively means that the standard you are to apply is less than conclusively?

Commissioner VON RAAB. Yes.

Senator DANFORTH. But a reasonable basis for believing that the product that arrives at the border was, in fact, made by forced labor?

Commissioner VON RAAB. The class of product that arrived at the border.

Senator DANFORTH. The class of product. That is even broader, so that some reasonable percentage of the product was reasonably made by forced labor?

Commissioner VON RAAB. Yes.

Senator DANFORTH. And the products again were what?

Commissioner VON RAAB. The final list, I believe, was tea, gold, refined oil products, tractor generators, and agricultural equipment.

Senator DANFORTH. And you didn't have any reason to believe that a reasonable percentage of those five products were produced or mined by forced labor?

Commissioner VON RAAB. I had no reason to believe that——

Senator DANFORTH. Well, let's take one at a time. The first one was what?

Commissioner VON RAAB. Tea.

Senator DANFORTH. Tea. All right. Do you have information as to whether or not tea is produced in the Soviet Union by forced labor?

Commissioner VON RAAB. The information—the evidence—that was presented to me led me to believe that tea was reasonably but not conclusively made with the use of forced labor.

Senator DANFORTH. Then, what is your basis for not excluding tea?

Commissioner VON RAAB. Subsequently, the agency made a determination that the evidence that had been provided to me was not a solid case. Therefore, the synopsis—or digestion, if you will—that they made of this put a different light on that information, but I did not see that.

Senator DANFORTH. Was that just a conclusion on their part?

Commissioner VON RAAB. Yes; That is correct.

Senator DANFORTH. Now, when they said that to you, somewhere—and I guess it is your testimony—they say that—Let's see—on January 17, 1985, the Director of CIA wrote to the Secre-

tary to advise him that despite continued monitoring, the CIA was unable to obtain sufficient facts to make a solid case that any particular good we received from the Soviet Union is made with forced labor. Now, does that—maybe, I don't know—maybe what the CIA is doing is using one standard and you are using another. That is, your standard is that the type of product is produced, at least a reasonable fraction of it is produced, by forced labor, whereas it would seem from reading this that the CIA is saying that, unless it can trace that specific good from the labor camp to the border, then it doesn't have sufficient evidence.

Commissioner VON RAAB. I don't know what was behind—or what was meant—by this letter. My interpretation of the letter was, in effect, that the evidence you have previously received has been reviewed by us again, and we know—we no longer believe that it makes a solid case.

Senator DANFORTH. In other words, they don't believe that they have a solid case that any tea is produced by forced labor in the Soviet Union.

Commissioner VON RAAB. That would be my reading of their letter, and that is how I read it.

Senator DANFORTH. All right.

Senator MOYNIHAN. Mr. Chairman, can I say that there is this question of the first CIA information that the Commissioner received via Senator Armstrong, and then the second. I think we should learn more about it.

Senator DANFORTH. All right. And again, Mr. Palmer, the position of the State Department and the position of the administration is that the law should be enforced, and your statement to us is that the administration is not looking for loopholes?

Mr. PALMER. That is correct, Senator.

Senator DANFORTH. You don't have any objection—at least you haven't voiced any—maybe you do. Tell us if you have an objection to Mr. von Raab's reading of the law. That is, his reading is that the specific item—you know, the can of tea—doesn't have to be traced from the labor camp. That would be impossible in the case of a fungible commodity, but that if a reasonable percentage of the product is made by forced labor, then that product should be excluded at our border. You don't have any objection to that?

Mr. PALMER. I think that is something I would like to give you an answer to subsequently, Senator. I am just not sure of my ground there.

[The prepared information follows:]

The Department of the Treasury has developed evidentiary standards for the application of Section 307. These standards recognize that, while section 307 only prohibits the entry of merchandise that actually contains "wholly or in part" components made with prohibited labor, the Secretary of the Treasury has substantive rulemaking power permitting him to detain other merchandise if reasonably necessary to achieve that purpose. However, the use of tools, factories, energy, or other means that were themselves made with prohibited labor to produce the merchandise is excludable only if any part or component is made with prohibited labor, except where the part or component is de minimus. In addition, the Customs Commissioner, before excluding any merchandise under the provisions of Section 307, must define the appropriate class of merchandise to be excluded. However, if the class established is excessively broad, that is, if it includes too many articles that are not subject to the statutory prohibition, the exclusion cannot be justified under the provisions of Section 307.

Senator DANFORTH. I think that the administration should maybe—in addition to meeting with whatever Senators would care to meet with them, or maybe another meeting that we would have, I don't know—but I really would believe that you should get your own group together maybe in a room and figure how what the quantum of proof is, as you understand it, or should be as you understand it.

Commissioner VON RAAB. Mr. Chairman, if I might, we would be happy to submit for the record the criteria that were developed and approved by the Treasury Department. They are some three or four pages. I think you will find by reading them that some of your questions may be answered. If, however, in reading them, you still would like us to do that, of course, we would be happy to do it.

Senator DANFORTH. All right. We would be happy to have it.

[The prepared criteria follows:]

LEGAL ELEMENTS AND EVIDENTIARY STANDARDS FOR APPLICATION OF 19 U.S.C. § 1307, PROHIBITING THE IMPORTATION OF CONVICT-MADE MERCHANDISE

I. THE STATUTE

The operative sentence of section 1307 provides:

"All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, ..."

An exception, applicable where domestic U.S. demand is not being satisfied, will be quoted and discussed later.

II. THE PROCEDURES

A. The Secretary of the Treasury has substantive authority to make "such regulations as may be necessary for the enforcement of this provision." In the exercise of that authority, he has promulgated regulations defining the procedures the Commissioner of Customs is to follow in enforcing section 1307. See 19 C.F.R. § 12.42–.44.

B. On receiving written information sufficient to support a decision and after such investigation as is warranted, *id.* § 12.42(a)–(d), if the Commissioner finds "that information available reasonably but not conclusively indicates that merchandise within the purview of section [1307] is being, or is likely to be, imported, . . . the district directors shall thereupon withhold release of any such merchandise. . . ." Id. § 12.42(e).

C. If the Commissioner actually determines "that the merchandise is subject to" section 1307, he is to obtain the approval of the Secretary of the Treasury and publish "a finding to that effect" in the Federal Register and the Customs Bulletin. Id. § 12.42(f).

D. Any particular entry of merchandise that is (1) within a "class specified in a finding made under paragraph (f)", and (2) still being detained by Customs at the time of the publication, is to be treated as "an importation prohibited by section [1307]" unless the importer is able to establish "by satisfactory evidence that that particular entry of merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding." Any importer, it appears, may voluntarily export the detained merchandise at any time.

E. Absent voluntary exportation, the Customs Service must hold the merchandise until 3 months after the publication or until 3 months after the attempt to import the merchandise, whichever is *later*. Up until that time, the importer may bring in evidence to establish that the particular merchandise at issue was not made with the use of a class of labor specified in the finding. *Id.* § 12.42(g).

F. If satisfactory proof has not been submitted within 3 months, Customs is to notify the importer "in writing that the merchanidse is excluded from entry". After waiting an additional 60 days to permit the importer to export the merchandise or file an administrative protest under 19 U.S.C. § 1514, Customs is to treat the merchandise as abandoned and destroy it.

III THE LEGAL ELEMENTS AND EVIDENTIARY REQUIREMENTS

A. While section 1307 only prohibits the entry of merchandise that actually contains "wholly or in part" components made with prohibited labor, the Secretary has substantive rulemaking power permitting him to detain other merchandise if reasonably necessary to achieve that purpose.

B. The responsibility of the Commissioner (to whom authority to implement the regulations has been delegated) is to make preliminary and (with the approval of the Secretary) final findings concerning whether merchandise is being or is likely to be imported in violation of section 1307. There is no provision granting any importer a right to participate at this stage of the process. In making those findings, under § 12.42 (e) and (f) of the regulations, both the detailed requirements of § 12.42(b) and the protest and judicial review provisions of § 12.44 cause us to conclude that the findings must be supported either with (a) a recitation of the evidence and reasons supporting it or (b) the detailed supporting material required to be submitted to the Commissioner under § 12.42(b), supplemented with the results of any further investigation he undertakes. This requirement, however, does not require that he reveal classified information and it is expressly contemplated that, should judicial review be sought at any point, the Government should reserve the option of protecting its intelligence sources and methods even at the cost of loss of the litigation. Appropriate unclassified summaries should be substituted to support the findings.

C. 1. Upon receiving information as provided in the regulation, the first step that the Commissioner must take is to define the appropriate class of merchandise. The Commissioner has the authority to proscribe the entry of "goods, articles or merchandise" through the use of administratively necessary classifications. That is, he is empowered (as a result of his substantive rulemaking authority under section 1307) to define categories of merchandise that are to be detained or excluded despite the fact that a particular class may be somewhat too narrow or too broad to coincide perfectly with the universe of merchandise that was actually produced with convict, forced, and/or indentured labor.

C. 2. In establishing each such class, the Commissioner should use the narrowest classification that he can reasonably establish. That is, by using the most specific Tariff Schedule classification possible, and/or narrowing limitations such as country of origin, manufacturer, or specific physical characteristics, he should seek to avoid prohibiting the entry of any merchandise that is not necessary to the task of excluding the prohibited merchandise. Where possible he should use multiple narrow classifications rather than a single broad one.

D. 1. Under the statute and regulations, merchandise is only excludable if it contains "wholly or in part" components made with prohibited labor. That is, the use of tools, factories, energy, or other means that were themselves made with prohibited labor to produce the merchandise will not make the merchandise excludable. In addition, the merchandise is excludable if any part or component is made with prohibited labor, except where the part or component is de minimus. Such a rule would comport with the construction given by the Court of International Trade to the term "in part." It would also permit the Treasury to invoke more easily the 1307 exclusion and shift to the importer and producer the burden of providing that the imported article is not "in part" of the offending component by establishing that the economic contribution of the prohibited labor to the article is de minimus.

D. 2. The legislative history of the statute reflects the intent of Congress to protect American industries from foreign competitors who obtain a competitive advantage by using forced labor. Therefore, with respect to any producer in a free market economy for which such information is available, the Commissioner should make a specific finding that the use of forced labor gives that foreign producer a more than de minimus price advantage over American producers. If such information is not available because either the foreign producer or the country in which it is located is unable or unwilling to make such information available or is unreliable because the producer is in a state controlled economy in which costs and prices can be artificially set, then the Commissioner should consider the following in determining whether a competitive advantage resulting from the use of forced labor is more than de minimus:

(a) whether the economy is free market or state controlled;

(b) the nature of the product (whether labor cost is a significant component);

(c) the (apparent) value added by use of forced labor;

(d) the number of parts added or assembled by use of forced labor, relative to the number of parts in the finished product;

(e) the percentage of time required for production of the article which is contributed by forced labor; and/or

(f) any other relevant information available.

E. 1. If the class established is excessively overbroad, that is, if it includes too many articles that are not subject to the satatutory prohibition, it cannot be justified under the rulemaking authority of the statute. A de minimus rule—to the effect that goods will only be excludable under section 1307 if the classification chosen is not too overbroad—should be developed on a case-by-case basis. In order to ensure that this important limitation is actually considered and applied in each case, the question of the overbreadth of each class should be expressly addressed in quantitative terms in each preliminary and each final finding. This step will help avoid a principal cause of the lack of uniformity in our past findings in this area. This is not to say that unrealistic precision should be artificially imposed on information that will not support it. But quantitative ranges (e.g., between 30 and 50%), rather than vague qualitative terms ("substantial" or "small") are needed, and the best estimate that is possible under the circumstances should be stated in the Commissioner's findings.

E. 2. The determination of the amount of overbreadth to be permitted is a judgment that should be made by the Secretary, or his delegee. So long as the overbreadth in each classification has been quantified to the extent that the available information reasonably permits, case-by-case application of the statute and regulations should lead to the evolution of more consistent standards than our past practice. This approach must permit the use of different quantitative standards where a country or other entity refuses to permit the Commissioner to perform an adequate investigation.

F. In deciding whether to act, the Commissioner must determine whether prohibited merchandise of the class defined "is being or is likely to be" imported. Although research failed to reveal any case in which this language was invoked absent an actual importation—with the resulting inference that additional merchandise was likely to be imported—there is no indication in the statute, regulation or legislative history that such a limitation was intended. It seems fair to interpret the word "likely" in accordance with the dictionary definition "reasonably to be expected," and not to read into it any more stringent standard implying that importation must be more likely than not.

G. 1. The Commissioner must then determine whether the exception in section 1307 for "goods, wares, articles, or merchandise . . . not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States" is applicable to any of the classes he has defined. The words "consumptive demand" cannot be read to mean demand at a price influenced or potentially to be influenced by importation of the prohibited merchandise, or the entire statute would be nullified and its purpose not served. Under the circumstances, it seems consistent with the statute only to apply it where there is no possibility of domestic production or what little there is cannot be significantly expanded even at a manyfold increase in price.

G. 2. The exception should use all domestic merchandise that fits within the classification that is selected for the finding (presumably stripping out the country-of-origin and, where applicable, manufacturer limitations), and should also take account of any commercially viable substitutes available in the domestic economy.

Senator DANFORTH. I guess the question is: Is the burden of proof, the amount of evidence that is required, so heavy that section 307 is rendered meaningless?

Commissioner VON RAAB. The problem I face is that I don't have Customs agents who can develop this kind of information—if you can understand it is a closed society. If the information is presented to me, and it is subsequently described by its collector as not a solid case, I don't feel that I should proceed on the basis of information that is described by its collector as not solid. And that is really the heart of the issue. If the agency had not taken the position that it no longer provided a solid case, this decision would have gone forward.

Mr. PALMER. Senator, if I might just add that in the State Department reports to you—to the Congress—we wrestled with this same problem—the question of what is the evidence; how good is it? The evidence is extremely good that the Soviets use forced labor

on a broad basis. There is no question about that. What you get into difficulty in a report—details in some cases—is trying to say whether particular products or brand names or, even in some cases, categories of products—whether those are produced with forced labor and to what extent they are produced with forced labor. There, the evidence—and we, of course, went into the evidence in the State Department in quite a bit of detail—the evidence is very thin.

Senator DANFORTH. All right. Now, let's take these five items. The first is tea. You think that the evidence is thin that tea is produced by forced labor in the Soviet Union?

Mr. PALMER. I would have to go back through the whole thing, and then we could give you a detailed report, but my overall recollection is that we were unable in any of these categories to produce really good evidence.

Senator DANFORTH. Now, remembering that the test is not conclusively but reasonably, still you were unable to meet the test of reasonable belief.

Mr. PALMER. The sources were, in all cases, old. That was one of the problems. We had virtually no—perhaps none—recent sources. They were all a decade old or older, and they were all partial. So, perhaps as Senator Moynihan suggested, perhaps you should have a briefing from the intelligence community on the nature of the evidence.

Commissioner VON RAAB. I think that would clear up a lot of these questions.

Senator DANFORTH. All right. Gentlemen, thank you very much. Next, we have Mr. Tom Kahn, assistant to the president, AFL–CIO; Mr. Paul Kamenar, executive legal director, Washington Legal Foundation; and Prof. Vladimir Bukovsky, Department of Psychology, Stanford University. Mr. Kahn?

STATEMENT OF TOM KAHN, ASSISTANT TO THE PRESIDENT, AFL–CIO, WASHINGTON, DC

Mr. KAHN. I want to thank the committee for this opportunity to present the views of the AFL–CIO on the subject of forced labor in the Soviet Union and on the enforcement of the law barring the importation of goods produced by such labor into the United States. More precisely, I should speak of the nonenforcement of the law.

The AFL–CIO last addressed this subject in November 1983, in hearings conducted jointly by the House Committee on Foreign Affairs and the Commission on Security and Cooperation in Europe. At that time, we urged ratification of the International Labor Organization's Conventions on forced labor, which would give our Government the standing to pursue this issue in the ILO, which it now lacks, and we urged strict enforcement of section 307 of the Smoot-Hawley Tariff Act, which prohibits the importation of products made "wholly or in part in any foreign country by convict, forced, or indentured labor."

Regretably, Mr. Chairman, I could easily resubmit our testimony of 1983 and depart from this chamber without fear that intervening events had rendered our statement obsolete. Not only has the administration failed to propose steps to enforce the law, but it ap-

pears to have moved toward the view that the problem is either nonexistent or beyond remedy.

Thus, the International Trade Commission estimated that the value of Soviet slave-labor goods imported into this country is only a fraction of the estimate earlier made by the Customs Commissioner. And the CIA Director reported that his agency did not have information "sufficiently precise to allow us to determine whether and to what extent the products of forced labor are exported to the United States."

Are we to infer that in the case of a totalitarian country such precise information is impossible to acquire or impossible to make known without divulging intelligence sources? Does it also thus follow that totalitarian states are exempt from the ban on slave-labor imports, or that the ban itself is unenforceable? If so, it would be hard to imagine a more ironic, legalistic subversion of a vital moral principle.

The irony is compounded by the fact that in the case of the Soviet Union one might well argue that forced labor is not confined to the 4 million workers in the camps. Considering the parasitism laws, the internal passport system, and other restrictions on the rights of workers to move freely and choose their own employment—restrictions all the more coercive in the absence of a genuine trade union movement—we could conclude that practically everything we import from the Soviet Union is produced in the words of Smoot-Hawley "wholly or in part" by forced labor. Forced labor, after all, is defined in the law as "all work or service which is exacted from any person under the menace of any penalty for its nonperformance." The Tariff Act does not describe the worksites at which forced labor is performed. It assigns no worksite to it. Forced labor is not confined to camps or prisons.

Yet, we find agencies of our Government haggling over whether a specific product sitting on our docks can be traced to a specific Gulag. Mr. Chairman, if the administration chooses to lift the ban on slave-labor imports, in the interest of its diplomatic strategies or whatever, then it should propose amendments to the Tariff Act to accomplish that purpose. But it should not gut the act by administratively imposing preconditions for its enforcement, which preconditions it then declares it to be unattainable.

One way out of this morass is to ban an entire product line on evidence that any product in that line is made with forced labor. Thus, we would ban all wooden chess sets, all boxes for radio receivers and television sets, all resistors, and so forth. After all, Mr. Chairman, chess pieces made by slave labor for sale in the Soviet Union contribute to the surplus of such products that are available for export. A generic ban would create no hardships for Americans inasmuch as there are no Soviet imports that are essential to the American economy.

Whether or not this proposal is adopted, American intelligence gathering agencies should be directed to redouble their efforts to trace the flow of slave-labor goods to the United States. Large numbers of former Soviet citizens now living in the West were formerly in slave labor camps or have relatives who were or lived near facilities where forced labor was used. If U.S. Government agencies are not in a position to conduct in-depth interviews with these emi-

grees, then perhaps funds should be made available to private human rights organizations to undertake this task.

No doubt there are other steps that might be taken to give effect to section 307 of the Smoot-Hawley Tariff Act, and the AFL–CIO would welcome all of them. What we cannot accept is the continued failure to enforce a law that embodies a principle so fundamental to a humane society as to require no defense. Thank you, Mr. Chairman.

Senator DANFORTH. Thank you, sir.

[The prepared statement of Mr. Kahn follows:]

STATEMENT BY TOM KAHN, ASSISTANT TO THE PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

My name is Tom Kahn, I am assistant to the president of the AFL–CIO, and I welcome this opportunity to present the views of our organization on the subject of forced labor in the Soviet Union and on the enforcement of the law barring the importation of goods produced by such labor into the United States. More precisely, I should speak of the nonenforcement of the law.

The AFL–CIO last addressed this subject in November, 1983, in hearings conducted jointly by the House Committee on Foreign Affairs and the Commission on Security and Cooperation in Europe. At that time we urged ratification of the International Labor Organization's Conventions on forced labor, which would give our government the standing to pursue this issue in the ILO, and we urged strict enforcement of Section 307 of the Smoot-Hawley Tariff Act, which prohibits the importation of products made "wholly or in part in any foreign country by convict, forced, or indentured labor."

Regrettably, Mr. Chairman, I could easily resubmit our testimony of 1983 and depart from this chamber without fear that intervening events had rendered our statement obsolete. Not only has the Administration failed to propose steps to enforce the law, but it appears to have moved toward the view that the problem is either nonexistent or beyond our capacity for action.

Thus the International Trade Commission estimated that the value of Soviet slave-labor goods imported into this country might be as low as $10 million, a mere fraction of the $138 million earlier estimate of the Customs Commissioner. And the CIA director reported that his agency did not have information "sufficiently precise of allow us to determine whether and to what extent the products of forced labor are exported to the United States."

Are we to infer that in the case of a totalitarian country such precise information is impossible to acquire? Or impossible to make known without divulging intelligence sources? Does it also thus follow that totalitarian states are exempt from the ban on slave-labor imports or that the ban itself is unenforceable? If so, it would be hard to imagine a more ironic legalistic subversion of a vital moral principle.

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No doubt there are other steps that might be taken to give effect to Section 307 of the Smoot-Hawley Tariff Act, and the AFL–CIO would welcome that. What we cannot accept is the continued failure to enforce a law that embodies a principle so fundamental to a humane society as to require no defense.

Thank you.

Senator DANFORTH. Mr. Kamenar.

STATEMENT OF PAUL KAMENAR, EXECUTIVE LEGAL DIRECTOR, WASHINGTON LEGAL FOUNDATION, WASHINGTON, DC

Mr. KAMENAR. Yes, thank you, Mr. Chairman. My name is Paul Kamenar, executive legal director of the Washington Legal Foundation. I appreciate the opportunity to be here today. I am sorry—I do not have any written testimony.

Quite frankly, I have been busy the last few days working on a brief to be filed today in Federal District Court in Baltimore on the death penalty in the Walker spy case on behalf of six Congressmen. But more importantly, the suit that we are representing Congressmen on is this issue. We have filed suit in the U.S. Court of International Trade on behalf of 35 Senators and Congressmen, the International Longshoremen Association, and various other groups. That is a Federal court—a U.S. court—seeking enforcement of this law to ban Soviet slave imports which are estimated to amount to about $200 million. And to stop actually the consumers from being forced to subsidize this Gulag labor is all the more sinister because the consumer can't boycott these goods—they are unfinished goods. If you are against apartheid in South Africa, as many are, they can always, of course, boycott the Krugerrand, but here we are importing, for example, gold ore. You can't boycott that.

Indeed, I am sorry that Senator Moynihan had to leave. He left to join the signing of a gold bill at the White House for the gold coin of the Statue of Liberty. It certainly would be a disgrace to that great symbol if, indeed, slave labor gold ore found its way into that Statue of Liberty gold coin, and that is perfectly a possibility.

Going to some of the prior testimony here, in terms of the level of the information you need in these cases, it is clear that on September 28, 1983, Von Raab made his finding that 36 goods are reasonably but not conclusively made by slave labor. We have submitted that document to the court as an exhibit. Legally, he has not revoked that finding. It doesn't have to be a 100 percent finding. You do not need 100 percent proof. That has already been established. They said they developed the criteria at the assistance of Treasury. There is no basis in the law for that criteria to be published. They didn't publish it as a regulation under the Administrative Procedure Act in the Federal Register. I have looked at that criteria. It seems to me that what they are trying to do is rewrite the law and usurp the role of Congress when the law says no goods in whole or in part can be imported. They went back and made a

shorter list of five goods, and they still came back and said, well, look, the CIA says we don't have a solid case, but they don't explain what they mean by "solid." How solid is solid? They talk about evidence being old. There is no reason to believe that the evidence is unreliable and the Soviets aren't continuing with that same pattern in practice. But the regulations provide that the burden shifts to the other side—to the importer—to prove otherwise, once the finding is made by the Secretary of the Treasury. And you don't need to show your sources and compromise your intelligence to make that burden shift. If the regulations didn't allow for the burden to shift to the importer to prove that the goods are not being made by slave labor, it seems that that law envisioned the possibility that you might not have 100 percent solid case. And that is why you put the burden on the other side and say now you come forward and dispute why we are not—why we don't have this particularly solid case.

After that finding was made in September 1983, various Senators and Congressmen sent letters to the Commissioner to enforce the law. We finally represented in 1984 Congressmen with this petition at the Customs Department on May 24 to enforce the law formally. We heard Congressman Horner testify that May 16 was the magic date over there at the Treasury Department. That date is apparently where they decided not to enforce this law. Under the Freedom of Information Act and documents I submitted in my lawsuit, and I can submit to this committee, we have here a May 16, 1984, memorandum from J. Robert MacBryan, the Deputy Secretary for Crisis Management of the Department of the Treasury, warning John Walker, the Assistant Secretary for Enforcement, that this petition from Congressman Livingston and the Washington Legal Foundation is about to be dropped on the Treasury Department. We then have a letter dated the very same day—May 16, 1984—from Bill Casey of the CIA to Don Regan saying—a completely unsolicited letter—hey, by the way, I decided that I would let you know that I don't think you have a good solid case on these slave labor goods. On May 16, the very same day, we got a letter from Don Regan to Von Raab saying: I have looked at what Casey happened to just send over to my office today, and we had better not go with any of these goods. And then we have a dateline, May 16, the very same day, in the New York Times saying that all bets are off on enforcing this law. In order for all of this to have happened on the same day, the CIA letter had to be drafted, typed, reviewed, and signed by Director Casey, hand delivered to the Treasury Department, reviewed by Secretary Regan, and a decision reached not to enforce the law. His memorandum of May 16 then had to be drafted, reviewed, and typed, signed, delivered to Von Raab, and a press release draft released to the New York Times that same day to make the morning edition for May 17. We only wish that the law would be enforced with such swiftness. I see my time is up. I have got a lot more to talk about. Perhaps I can keep the record open and submit further comments and take any questions.

Senator DANFORTH. Thank you. Mr. Bukovsky.

STATEMENT OF VLADIMIR BUKOVSKY, DEPARTMENT OF PSYCHOLOGY, STANFORD UNIVERSITY, STANFORD, CA

Mr. BUKOVSKY. Thank you, Mr. Chairman. My name is Vladimir Bukovsky, and previous to being released in 1976, I have spent about 11½ years in different Soviet labor camps. So, I would like to expand on a point made by Tom Kahn, and to change an old tradition of interpreting forced labor only as the work of prisoners in Gulags. Such interpretations always return us to the most difficult problems, namely, what products and goods exported from the Soviet Union to the United States are manufactured by the prisoners or to what extent the prisoners' labor contributed to the manufacturing of such goods and products. Consequently, our discussions—our conclusions become uncertain, especially when we go into discussions of such controversial programs as the number of prisoners in the Soviet Union or what part does the prisoners' labor play in the Soviet economy. This information is a closely guarded secret in the Soviet Union, and therefore, our discussions are usually reduced to speculations. Besides, in doing so, we leave out a large amount of the Soviet population and a larger problem of the Soviet life—the so-called free labor, taking it for granted that it is indeed free. We can return to the question of prisoners' labor later in the discussion. However, in my view, it presents only a more extreme example of usual Soviet practice. Forced labor is defined in American law and specifically in the Tariff Act of 1930, provision 307—this is the law we are concerned about right now—as all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. Given the definition, I am quite prepared to prove that any labor in the Soviet Union is a forced labor. The Soviet constitution adopted in 1977, in which article 60 states, and I quote:

> It is the duty of and a matter of honor for every able-bodied citizen of the Soviet Union to work consciously in his chosen socially useful occupation and strictly to observe labor discipline. Evasion of socially useful work is incompatible with the principles of socialist society.

For those who still might be under the impression that the Soviet able-bodied citizen is free to choose his occupation and offer himself voluntarily, article 14 of the Soviet Constitution explains that, I quote:

> The State exercises control over the measure of labor and of consumption in accordance with the principle of socialism: from each according to his ability, to each according to his work.

Needless to say, the state also determines what is socially useful work in the Soviet Union. Thus, if you have been unfortunate to be born in the countryside with your parents being workers in the kolkhoz—a collective farm—it is deemed to be socially useful if you remain a kolkhoznik, as well as your children and grandchildren and so on until communism is finally built in the Soviet Union. For unless you render a particularly useful service to the Communist Party, you will never be given an internal passport with a special police permission to change your place of living. And it is a criminal offense to do so without such permission under article 198 of the Criminal Code.

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The Soviet Union is not a welfare state. There are no unemployment benefits or welfare payments. The "honorary" duty described in the constitution is exacted under the threat of criminal punishment. Thus, article 209, with a sign 1, of the Penal Code of the Russian Federation, which was later merged with article 209 in 1975, offers up to 2 years of imprisonment for the unemployed or to anybody who refuses to accept a "socially useful" job suggested by the authorities. A repeated offense is punishable by up to 3 years of imprisonment.

Mr. Chairman, there is no way to establish how many people are punished annually under this law or what proportion of the Soviet labor force is directly affected by other legislative restrictions—the restricted right to change their place of work, place of living, et cetera. In my view, the very existence of such law and the practice is sufficient for us to claim that all labor in the Soviet Union is forced labor. In this context, conditions under which Soviet prisoners are forced to work in the Gulag is just an illustration of the Soviet ideology, not an exception. For if the labor as such in the Soviet Union is forced labor, the labor of prisoners is slave labor. And the latter constitutes an integral part of the former. The living principle of socialism is: Those who do not work do not eat. And it is not merely a figure of speech. It is a law.

Let us imagine a person who refuses to work in the Soviet Union. There are, for example, some religious groups which regard the Soviet power as the power of the devil and refuse to work in any state-owned enterprise. Such a person after being duly convicted under article 209 of the Penal Code would be transported to one of many thousands of corrective labor camps. Here, again, the question of honorable duty will appear in front of him, inevitable as death. And article 37 of the Corrective Labor Code of the Russian Federation says every convict is obliged to work. Under article 53 of the same code, refusal to report for work is an offense punishable by up to 1 year of isolation, by a reduced ration of food, by withdrawal of privileges to buy or receive any type of food, et cetera. Even in a punishment cell, where cold, hunger, lack of light, prohibition to smoke or to read, make the life of a prisoner quite miserable, he is still obliged to work and to fulfill his quota or his food ration will be further reduced, according to article 56 of the Corrective Labor Code. The lowest ration—the notorious 9B norm of the Secret Minister of Interior Instruction 0025— provides hot food only every next day, while on the alternative days, a prisoner is given only a piece of bread and water. Once, I had managed to copy this ration, it consists of, and I quote:

7.5 ounces of rye bread, 1.8 ounces of fish, 0.3 ounces of flour, 0.18 ounces of fat, 7.5 ounces of potatoes, 6.0 ounces of vegetables, usually cabbage, 1.5 ounces of groat, and 0.6 ounces of salt.

Senator DANFORTH. I am going to have to interrupt you, Mr. Bukovsky, but your testimony will be included in the record.

Mr. BUKOVSKY. OK.

[The prepared statement of Mr. Bukovsky follows:]

TESTIMONY BY VLADIMIR BUKOVSKY

Mr. Chairman, My name is Vladimir Bukovsky. Before being expelled by the Soviet authorities in December 1976 in an exchange of prisoners, I have served more

than 11 years in different prisons, labor camps and psychiatric hospitals as a political prisoner for human rights activity. Currently, I am a researcher at Department of Psychology, Stanford University in California.

I would like to expand the point raised by Tom Kahn of the AFL-CIO, and to start by challenging an old tradition of interpreting "forced labor" only as a work of prisoners in GULAG. Such narrow interpretation always returns us to endless discussion of the most difficult questions, namely, what products and goods exported from the Soviet Union to the United States are manufactured by the prisoners, or, to what extent the prisoner's labor contributes to manufacturing of such goods and products? Consequently, our conclusions become uncertain, particularly when we go into a discussion of such controversial problems as the number of prisoners in the Soviet Union, or, what part does the prisoner's labor play in the Soviet economy?

This information is a closely guarded secret in the USSR and, therefore, our discussions are usually reduced to speculations. Besides, in doing so, we leave out a larger group of the Soviet population and a larger problem of the Soviet life—a so called "free labor", taking it for granted that it is indeed free.

We can return to the question of prisoners' labor later in the discussion. However, in my view, it represents only a more extreme example of the usual Soviet practice.

"Forced labor" is defined in American law, specifically in the Tariff Act of 1930, provision 307, as:

"All work or service which is exacted from any person under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily".

Given this definition, I am quite prepared to prove that any labor in the Soviet Union is a forced labor. Thus, Soviet Constitution, (adopted in 1977) in its Article 60 states:

"It is the duty of, and a matter of honor for, every able-bodied citizen of the USSR to work conscientiously in his chosen, socially-useful occupation, and strictly to observe labor discipline. Evasion of socially useful work is incompatible with the principles of socialist society".

For those, who still might be under the impression that the Soviet able-bodied citizen is free to choose his occupation and "offer himself voluntarily", article 14 of the Soviet Constitution explains that:

"The State exercises control over the measure of labor and of consumption in accordance with the principle of socialism: "From each according to his ability, to each according to his work".

Needless to say, the State also determines what is "socially useful" work in the USSR. Thus, if you have had a misfortune to be born in a countryside while your parents were working in a kolkhoz (collective farm), it is deemed to be socially useful if you remain a kolkhoznik too, as well as your children and and grandchildren, and so on, till communism is finally built in the USSR. For, unless you render a particularly useful service to the Communist Party, you will never be given an internal passport with a special police permission to change your place of living. And it is a criminal offence to do so without such a permission (Article 198 of the Penal Code of Russian Federation).

Soviet Union is not a welfare state, there is no unemployment benefit or welfare payments. The "honorable duty" described in the Constitution is exacted under the threat of criminal punishment. Thus, Article 209 of the Penal Code of the Russian Federation (and equivalent Articles in the Penal Codes of other Republics), offers up to 2 years of imprisonment to an unemployed, or to anybody who refuses to accept a "socially useful" job suggested by the authorities. A repeated "offence" is punishable by up to 3 years of imprisonment.

Mr. Chairman, there is no way to establish how many people are punished annually under this law, or what proportion of the Soviet labor force is directly affected by other legislation restricting the right to change their place of work, place of living, etc. In my view, the very existance of such law and practice is sufficient for us to claim that all labor in the USSR is a forced labor.

In this context, conditions under which Soviet prisoners are forced to work in the GULAG is just an illustration of the Soviet reality, not an exception. For, if the labor as such is a forced labor, the labor of prisoners is a slave labor. And the latter constitutes an integral part of the former.

The leading principle of socialism is: "Those who do not work—do not eat". And it is not merely a figure of speech. It is a law.

Let us imagine a person who refuses to work in the Soviet Union. There are, for example, some religious groups, which regard the Soviet power as a power of Devil, and refuse to work in any state-owned enterprise. Such person, after being duly convicted under Article 209 of the Penal Code, would be transported to one of many

thousands corrective labor camps. Here again, the question of "honorable duty" will appear in front of him, inevitable as the death. Under Article 37 of the Corrective Labor Code of the Russian Federation "every convict is obliged to work."

Under article 53 of the same Code refusal to report for work is an offence punishable by up to one year of isolation, by a reduced ration of food, by withdrawal of different privileges, etc.

Even in a punishment cell, where cold, hunger, lack of light, prohibition to smoke or to read make life of a prisoner quite miserable, he is still obliged to work and to fulfill his output norm, or his food ration will be further reduced (Article 56).

The lowest ration, the notorious 9 B norm of a secret Ministry of Interior instruction 0025, provides hot food only every next day, while at the alternate days a prisoner is given only a piece of rye bread and water. Once I had managed to copy this norm. It consists of: 13.5 oz of Rye Bread; 1.8 oz of fish; 0.3 oz of flour; 0.08 oz of fat; 7.5 oz of potato; 6.0 oz of vegetables (usually of cabbage); 1.5 oz of groats and 0.6 oz of salt. Fish, cabbage and potato are usually rotten and unfit for the human consumption.

The purpose of this torture is not just to break people down spiritually, but also to increase productivity of each prisoner. The production norms are established arbitory, and are increased whenever the authorities want it. Thus, according to the testimonies by Eduard Kuznetsov at the International Sakharov Hearings in Washington, D.C. in 1979, the norms of production in the labor camp for political prisoners "Sosnovka" (Mordovskaya ASSR) has been increased 5 times between 1972 and 1979, although the technology and equipment did not change at all.

There are some products of prisoners' labor which go directly for export. Thus, in political camps in Mordovia in 1970s the prisoners were known to manufacture spare parts for the Soviet cars made for export.

In 1979 a consignment of timber was received in West Germany from the Soviet Union as a part of a usual deal under a long-term agreement between the two countries. This consignment has contained hidden in it a note from a prisoner Akhmetov serving his term in Krasnoyarsk District. Apparently, his job was to load this timber and, knowing it is destined for export, he secretly placed his appeal to the West among the timber. The matter has got some publicity in the German press.

Mr. Chairman, such examples are numerous, but I believe it is much more important to understand that any product received from the Soviet Union was manufactured at least with some help from the prisoners' labor. Quite often, the prisoners are forced to produce either raw materials, or to take part in the initial stages of production, thus contributing to the process. It is impossible to determine where the prisoners' work and the work of the so-called "free labor" differentiated. Sometimes both categories of workers are used in the same construction site, and many products of prisoners' labor are used subsequently by the free labor", and visa versa. The prisoners are still quite widely used in mining industry and in timber production. Or, to make another example, in 1972–73 I was in a camp 35 in Perm District (North Urals). The production in our camp was, in fact, (or a shop), of a bigger factory situated in Sverdlovsk with no prisoners' working there. It was a tool factory and we were providing a middle section of the production process. These tools were subsequently used by all major Soviet engineering enterprises. Thus, it could be said that any product of the Soviet engineering is produced with the help of prisoners' labor.

Furthermore, there was a new provision introduced into the Soviet legislation in the early 60s, under which those convicted to up to 3 years of imprisonment, or those who were released on parole after serving half of their terms, should be shipped to the construction sites of the "peoples economy". Since then, this practice became quite common, with millions of such ex-prisoners working in all branches of the Soviet economy, particularly in the chemical industry and construction. There are indications, for example, that the anhydrous ammonia plant in the Ukraine (not far from Odessa) which produces the product exported to the United States, also uses this type of labor.

These people are subject to all kinds of coersion, restriction and limitation, violation of which may lead to lifting of the suspension imposed upon their sentences. In other words, if these people will try to change their place of work or living they will be sent back to the camps to serve the entire term.

Why does the Soviet Union use the prisoners' labor in its industry? There are several reasons for it. First, the Soviet economy is what is called an extensive economy with a chronocal shortage of labor. Second, many branches of the Soviet economy have particular difficulty to attract the free labor because of its geographic location, harmful effects on the laborer's health, or low payment. Third, and probably more important for our discussion, only the cheap labor can make some products able to

stand the competition in the world's market because of their low prices. Fourth, as I indicated above, the productivity of prisoners can be arbitrarily regulated by assorted punishments, or by a threat of death of starvation.

Naturally, the increased demand for these products on the world's market will automatically lead to increase in the use of prisoners' labor, and therefore, to an increase in prison camps population.

Finally, let me briefly assess the results of possible US embargo on the Soviet imports into this country. For the reasons given before, I believe such action will lead to a decrease in the use for forced labor. I also believe that such action might force the Soviet authorities to consider broader economic changes and reforms in labor laws. This would be definitely a step in the right direction, and an important message from America to Russian people—a message of concern about the latter's well-being and freedom.

Senator DANFORTH. I would like to ask you one question, if I could. As I am told, you have personal experience being a prisoner, and I wonder if you could share with the committee your personal experience with forced labor.

Mr. BUKOVSKY. I have described the rules, and I can, of course, give many examples of my own life in these places. Although I have only been in prison—what?—only 8½ years ago I was released. There are many new, more fresh examples I have brought to you to show you some of the materials from the Soviet Union.

Senator DANFORTH. You were in prison? Is that correct?

Mr. BUKOVSKY. Yes.

Senator DANFORTH. Where was that?

Mr. BUKOVSKY. I was in prison several times—four times to be exact. I have been in different camps, some of them in the European part of the Soviet Union; some of them in the Northern Ural Mountains; also in some prisons and mental institutions.

Senator DANFORTH. And during your incarceration, were you put to work in various manufacturing or mining capacities?

Mr. BUKOVSKY. Yes, certainly. It is a requirement as I said, and the prisoner cannot refuse to work without being severely punished. At one point, I was forced to manufacture furniture in the Voronnezh District, south from Moscow. At another point, our camp—a political camp situated north in the Urals in the Perm District—was actually a part of a production line for a big enterprise situated in Sverdlovsk. We were manufacturing the tools which were subsequently used by any parts of the Soviet industry.

Senator DANFORTH. Tubes?

Mr. BUKOVSKY. Tools. Different tools.

Senator DANFORTH. Yes. Now, the International Trade Commission had on its—it had a list of five different products which it originally believed were produced by prison labor. Do you have any knowledge of any of these? Tea, for example?

Mr. BUKOVSKY. Yes, I do. I was very interested to listen to that discussion about the tea production because it so happens that, in 1969, when I was in a camp in Voronnezh District, a consignment of prisoners from Georgia came to us. About 25 prisoners were transported from Georgia to our camp. All of them previously worked on tea production, and they were thoroughly displeased by this change in their lives. They were actually sent to our camp as a measure of punishment because their previous work on the tea plantations was much more pleasant for them, and the climate was, of course, more appropriate to them so they were sent up north as a punishment. According to their explanations, they were

collecting tea from the plantations and the subsequent processing of the tea was not given to them. It was for somebody outside of the camp. The explanation why they were chosen by this camp was given this task of plucking up tea leaves and others was rather peculiar. They said that in the closely guarded prison camp, it is safer for them to deal with the high quality tea. It has less chance of being stolen and sold in the black market, although some percent of it still is stolen by the prisoners, but it would be limited. While if it was so-called free labor, the amount of the tea stolen would be unlimited. Therefore, they were dealing with high quality tea, and they believed at least part of it was going for export.

Senator DANFORTH. For export? How about refined oil products?

Mr. BUKOVSKY. I have no knowledge about that although I have heard from other prisoners that some of them have been working in related fields. The most common product produced by prisoners, particularly in Siberia and the northern parts of the country, is timber. In 1979, a consignment of timber was received in West Germany which contained a hidden note among the timber from a prisoner serving his term in Krasnoyarsk District. In this note, he described the conditions under which the prisoners have to work and appealed in general to the West to help them. He apparently was working on the loading of that consignment, and he knew that it goes westward.

Senator DANFORTH. How about tractor generators?

Mr. BUKOVSKY. I don't know much about tractor generators. I know that in the Mordovia District, where we have a compound of camps for political prisoners, in 1970's the prisoners were manufacturing the spare parts for Soviet cars, which are going for export.

Senator DANFORTH. And how about gold ore?

Mr. BUKOVSKY. The gold ore—I have only very old knowledge—old dated knowledge of that. I have met people who were working in the Kalyma District in the 1950's. At that time, they had a huge number of prisoners working in that area, but I have no evidence of a later date production of gold.

Senator DANFORTH. How about agricultural machinery?

Mr. BUKOVSKY. Yes. There were indications of that, particularly in the Urals. The Ural is one of the areas of heavy industry and engineering manufacture, and there were a sufficient number of people who were working in that area, in different branches of industry, all of them related to production of different machinery. It should be said that the prisoners' work is indeed an integral part of the Soviet economy. For example, some of them are working in the iron cast factories, in the smeltering factories, and of course, the metal produced by them will be widely used in different branches of the Soviet economy—all of them practically.

Senator DANFORTH. Were the people that you knew in prison largely political prisoners, or were they people who were convicted of a variety of crimes—stealing or assault? Were they the kind of—In other words, were they the kind of prisoners that I would find at the State Penitentiary in Jefferson City, MO?

Mr. BUKOVSKY. They were in both categories. Usually those convicted under the—what is described in the Soviet Penal Code as especially dangerous state criminals. That is a euphemism for political prisoners in the Soviet legislation, since they don't recognize

the existence of political prisoners. This category of prisoners will be kept separately—in separate jails and in separate camps. However, when transported from camp to camp or from prison to camp, these prisoners also share the same trains and the same cars on the trains, and they can exchange information. Also, several categories of political prisoners in the Soviet Union are now excluded from that chapter. They have to serve their term with the common criminals. For example, those who are sentenced under article 190-1-2-3 or the religious activists who are convicted under article 142 are routinely sent to the corrective labor camps together with the common criminals. I, for example, served in 1967 to 1970 in the camp for common criminals.

Senator DANFORTH. I mean, is there a distinction between the use of prison labor in the Soviet Union and the use of prison labor in the United States—say, for example, to make road signs or license plates? Is there a difference?

Mr. BUKOVSKY. Well, there is a difference. The prisoners in the Soviet Union are used as cheap labor in the branches of economy which have difficulty in attracting free labor. For example, because of low payment or because of the difficult geographical location, or because of the harmful nature of the industrial process. Also, the Soviet Union uses prisoners' labor in certain areas where the productivity is impossible to raise by anything except very high incentives. And with prisoners, it is easier, as I said, because they can increase this productivity by different assorted measures of punishment. For example, in testifying to the international Sakharov hearings in 1979, my friend Kuznitzov indicated that the productivity in the camp in Mordovia where he served was increased 5 times in 5 years artificially because the Soviets wanted more product. So, that is another reason. So, I am sure that the labor in American institutions would be regulated by strict law—labor law—and there would be people who would be responsible for observing the provisions of this law, while in the Soviet Union all kinds of codes are violated when it comes to the labor of a prisoner. So, first of all, it is done for cheap production; it is cheap labor. It makes the goods produced by them compatible and viable in the international market. It is done for economic reasons where, otherwise, the labor might be paid much higher or conditions might be observed which are difficult for technological processes.

Senator DANFORTH. Mr. Kahn, you heard the testimony of the administration witnesses, Commissioner Von Raab and Mr. Palmer. Was it convincing testimony to you?

Mr. KAHN. No, it was not, because they don't answer the fundamental question: Why is it that we have a law on the books which is not being enforced?

Senator DANFORTH. Well, they say that they don't have the goods on the other countries.

Mr. KAHN. As I read the law, the law does not require that more than 5 percent of any product line be produced in a slave labor camp for that product to be banned. That was an element introduced administratively. That was a decision that somebody made. Why is 5 percent all right and 20 percent not all right?

Senator DANFORTH. I am not sure that is exactly what he said.

Mr. KAHN. That is what I think I heard.

Senator DANFORTH. He said some significant portion.

Mr. KAHN. How does one decide——

Senator DANFORTH. What is wrong with their presentation? Why isn't this just a problem of proof and inadequate evidence? Do you think that it is a policy decision they made, and they are using the absence of evidence as——

Mr. KAHN. I suspect it is a policy decision. I have no way of knowing, but I know what the consequence of it is. The consequence is that the burden of proof is put on the CIA and not on the Soviet Union.

Senator DANFORTH. Yes.

Mr. KAHN. And in a sense what we are doing is rewarding the Soviets for having a society so closed that it becomes difficult to get evidence about the products from these camps. And rather than taking the view that since they are a closed totalitarian society, from which it is hard to get evidence, we will accept a lower standard of evidence than we might insist on from a more open society, we, in effect, reward them to the degree that they are closed. We end-up with a standard that—by the administration's own admission—cannot be met. As I read the letters from Bill Casey and listen to the statements from the International Trade Commission, I conclude that the administration is telling us that this law cannot be enforced. And if it cannot be enforced, in the view of the administration, why does the administration not propose to repeal it? I am not part of the administration, and the AFL–CIO is not frequently consulted on these matters, but I find it very hard to believe that this issue is completely separate and apart from any other considerations that the administration might have in mind with regard to United States-Soviet relations. I am tempted to speculate that the President would rather not have the forced labor issued on the agenda for his meeting with Mr. Gorbachev in Geneva. But I also know that the tariff act has gone unenforced for a long time. So, I don't think it is a partisan issue. I think perhaps we are afraid sometimes of the implications of our own human rights policies, if they are consistently and forthrightly put forth.

Senator DANFORTH. How about you, Mr. Kamenar? Were you persuaded by the administration's statements?

Mr. KAMENAR. Not particularly, and that is why we are in court to try to get our case decided by the court system. I do want to at least make the note that this administration at least is the first one in a long time to at least begin to look at this issue. The prior and recent administrations have not. The last time this law was enforced was between 1950 and 1961 when we banned the canned crabmeat. So, it is going in the right direction, but it has now reached this roadblock, and I can't for the life of me decide what the reason is. I don't think there is proof reason that really holds up because, as we just mentioned, the very countries that we want to use this against the most—closed and barbaric societies—are taking advantage of the fact that we don't have the 100 percent proof. The law doesn't require that Von Raab make his decision—he can today enforce that law by putting that finding in the mill—I will be glad to give him the postage—to the district directors saying here is the list of 36 products—enforce the law. And automatically, they have a nondiscretionary duty to do so. To the poli-

tics, with disruption of tea time with the Soviets or whatever the case may be, I don't really see that as legitimate. The specter of a trade war or cancelling a grain deal—I don't think that is necessarily even in the cards. In 1983, the United States banned nickel coming from the Soviet Union because it had violated another Customs law, and that is that the nickel was being transshipped from Cuba to the Soviet Union and coming to the United States. At that time, we had the courage to say to the Soviet Union: You can't violate our Customs law by letting this nickel come in. And I didn't see World War III break out or the grain deal cancelled in that case. So, I am kind of puzzled as to what the roadblock seems to be. I asked Secretary Schulz at a meeting a couple of months ago point blank whether he and the State Department are trying to block this. He professed no, that it was actually a matter of evidentiary problems which Treasury—The State Department, according to Secretary Shultz, has no role in enforcing this whatsoever. Of course, I find that kind of interesting because Mr. Palmer kept talking about "we fully intend to enforce the law," "we intend to do this and that." But the State Department has no role under the statutes.

Senator DANFORTH. Some people have suggested—you know, in general, with respect to application of human rights policy—that tends to be applied against weak friends.

Mr. KAMENAR. That is perhaps correct. In fact, I had a debate on this issue with a prior Carter administration official who said that we should enforce this law because we should use quiet diplomacy, but then I said to myself: That seems kind of strange because with weak friends, we want to beat them over the head publicly with human rights issues, and with the most barbaric country in the world the Soviet Union—we want to take a back-seat approach.

Senator DANFORTH. Gentlemen, thank you very much for your testimony. We appreciate it.

[Whereupon, at 4:25 p.m., the hearing was adjourned.]

[The following communications were made a part of the hearing record.]

Board of Supervisors
County of Los Angeles

MICHAEL D. ANTONOVICH
SUPERVISOR FIFTH DISTRICT

July 8, 1985

Senator William Armstrong
528 Senate Hart Office Bldg.
Washington, D.C. 20510

Dear Senator Armstrong:

Please include the attached documents as written testimony to be submitted to the International Trade Subcommittee of the Senate Finance Committee during the hearings on slave labor.

Enclosed you will find my motion and resolution relative to the import and sale of goods produced by slave labor. The motion was unanimously adopted by the Los Angeles County Board of Supervisors at the meeting of February 12, 1985, and I ask that it be made part of the record.

Sincerely,

MICHAEL D. ANTONOVICH
Supervisor, Fifth District
Chairman, California
Republican Party

Hope you are well—

MDA:bn

Enclosure

ROOM 869, HALL OF ADMINISTRATION, 500 WEST TEMPLE STREET, LOS ANGELES, CA 90012 TELEPHONE (213) 974-5555

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS

RESOLUTION

By

Supervisor Michael D. Antonovich

WHEREAS, currently, California State law prohibits any firm within the State from selling, trading, keeping or displaying for sale any goods produced wholly or in part, by prison labor, unless such items are plainly labeled "Convict-made";

WHEREAS, any person or corporation violating this provision is guilty of a misdemeanor;

WHEREAS, the Federal Smoot-Hawley Tariff Act of 1930 prohibits importing any products which are made by foreign convict labor;

WHEREAS, in spite of these laws, and despite blatant human rights violation, the United States continues to import the fruits of Soviet forced labor; and

WHEREAS, such products include chemicals, machinery, uranium, gold, wood products, clothing, and food;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Los Angeles request the Governor, State Attorney General and the Director of the California Department of Food and Agriculture to assist in the enforcement of the provisions of Section 2881 of the California Penal Code.

BE IT FURTHER RESOLVED that the Board of Supervisors of the County of Los Angeles request the President of the United States, the Vice President, the United States Attorney General, the Secretary of the Treasury, the Department of Commerce and the United States Customs Service to assist in the enforcement of the Smoot-Hawley Tariff Act of 1930.

The foregoing resolution was, on the twelfth day of February, 1985, adopted by the Board of Supervisors of the County of Los Angeles, and ex-officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.

LARRY J. MONTEILH
Executive Officer-Clerk of the
Board of Supervisors of the
County of Los Angeles

SYN. NO. _____

MOTION BY SUPERVISOR MICHAEL D. ANTONOVICH FEBRUARY 12, 1985

Currently, California State law prohibits any firm within the State from selling, trading, keeping or displaying for sale any goods produced wholly or in part, by prison labor, unless such items are plainly labeled "Convict-made". (California Penal Code Sec. 2881). Any person or corporation violating this provision is guilty of a misdemeanor.

Further, the Federal Smoot-Hawley Tariff Act of 1930 prohibits importing any products which are made by foreign convict labor.

In spite of these laws, and despite blatant human rights violation, the United States continues to import the fruits of Soviet forced labor. Such products include chemicals, machinery, uranium, gold, wood products, clothing, and food.

I, THEREFORE, MOVE that the Board recommend:

1. To Governor George Deukmejian, State Attorney General Van de Kamp and the State Superintendent of Weights and Measures to assist in the enforcement of the provisions of Section 2881 of the California Penal Code.
2. To President Ronald Reagan, Vice President Bush, the United States Attorney General, the Department of Commerce, and the United States Customs Service to assist in the enforcement of the Smoot-Hawley Tariff Act of 1930.

# # #

JMD:dw

	MOTION
Schabarum	
Hahn	
Dana	
Antonovich	
Edelman	

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

Assembly Joint Resolution No. 57

Introduced by Assembly Members Roos, Alatorre, Bradley, Chacon, Condit, Costa, Davis, Farr, Ferguson, Filante, Hauser, Isenberg, Katz, Klehs, Leonard, McClintock, Nolan, Vasconcellos, Norman Waters, and Wyman
(Coauthors: Sentors Lockyer, Petris, Richardson, Rosenthal, and Royce)

June 10, 1985

Assembly Joint Resolution No. 57—Relative to the Smoot-Hawley Tariff Act of 1930.

LEGISLATIVE COUNSEL'S DIGEST

AJR 57, as introduced, Roos. Smoot-Hawley Tariff Act of 1930.

This measure would memorialize the Secretary of the Treasury to adopt appropriate regulations which identify goods being imported into this country and which have been made, in whole or in part, by forced labor in the Soviet Union.

Fiscal committee: no.

WHEREAS, Under applicable provisions of the Smoot-Hawley Tariff Act of 1930 (19 U.S.C.A. Sec. 1307) all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict, forced, or indentured labor must be excluded from entry into this country; and

WHEREAS, The Secretary of the Treasury is directed by the tariff act to prescribe by regulation for the enforcement of the act; and

WHEREAS, In 1982 alone, the United States imported approximately $228,000,000 worth of goods from the Soviet Union, with a large amount of those goods being

made by industries which wholly or partially rely on forced labor; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorialize the Secretary of the Treasury to adopt appropriate regulations which identify goods being imported into this country and which have been made, in whole or in part, by forced labor in the Soviet Union; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Secretary of the Treasury and to each Senator and Representative from California in the Congress of the United States.

O

INTERNATIONAL HUMAN RIGHTS LAW GROUP
1346 Connecticut Ave., N.W.
Suite 502
Washington, D.C. 20036

(202) 659-5023
Cablegram: INTLAWGRP

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Written Statement

Submitted by the

INTERNATIONAL HUMAN RIGHTS LAW GROUP

to the

International Trade Subcommittee of the

SENATE FINANCE COMMITTEE

Hearings on Enforcement of the Statute Banning the Import of Goods Manufactured with Slave Labor

July 9, 1985

The International Human Rights Law Group (Law Group) is a nongovernmental, public interest law center concerned with the promotion of international norms of human rights. Throughout the Law Group's seven years existence, it has sought to promote awareness and encourage implementation of the numerous statutes passed by Congress during the last decade relating human rights concerns to United States foreign policy. As part of this effort, to date the Law Group has published three editions of a compilation entitled United States Legislation Relating Human Rights to United States Foreign Policy. A fourth edition is being prepared.

Among the statutes included in the compilation are sections 502 (b) and 116 of the Foreign Assistance Act, which prohibit respectively the sale of arms and the providing of economic assistance to countries "which engage in a consistent pattern of gross violations of internationally recognized human rights", and section 307 of the Tarrif Act of 1930, which is being considered at present by this Committee, and which prohibits the importation of slave-made goods into the United States. A recent noteworthy addition in this area is the Trade and Tarrif Act of 1984 which provides that before a foreign country is granted special preference status, due regard be given to whether the country respects internationally recognized workers' rights.

These statutes express the will of Congress that the conduct of foreign policy reflect United States values, including respect for the dignity of the individual. Furthermore, these laws recognize the international community's consensus on the

rights to be accorded each person. To its dismay, the Law Group believes that these statutes and others are being purposefully ignored by the present Administration. This frustration of Congressional policy deserves the attention of this Committee. The Law Group thus complements the Committee for undertaking this review of Administration efforts to enforce the ban on the importation of slave-made goods.

In 1983, the Executive Director of the Law Group, Ms. Amy Young, testified before the House Sub-Committee on Human Rights and International Organizations, which was holding hearings on Forced Labor in the Soviet Union. Her testimony concerned the historical development of international standards on the subject of forced labor. As Ms. Young stated at the hearing, "freedom from slavery in all its forms is the oldest human right to be recognized and outlawed by the international community." Section 307 of the Tarrif Act reflects the United States attitude toward this abhorent policy, which,even today, is too frequently practiced in one guise or another.

The major difficulty with implementing Section 307 has been identifying the particular goods that have been made with slave labor. However, as Ms. Young stated at the 1983 hearing, the evidence available from the State Department and other international organizations, establishes a close connection between the manufacture of certain goods with slave labor in the Soviet Union and goods being imported into the United States. Under the statute, the import of these goods should be banned.

The Secretary of Treasury's finding of "no reasonable basis in fact to establish a nexus between Soviet forced-labor practices and specific imports from the Soviet Union", in view of the other evidence available requires further explanation. The basis for the Secretary's determination should be examined carefully by this Committee as part of its oversight responsibility. While the Law Group supports the attempt to maintain diplomatic and civil relations with the Soviet Union, the price of such relations should not entail the support of trade involving goods manufactured with slave labor nor should the price entail a failure to implement a Congressionally mandated policy.

The Law Group hopes this hearing will encourage renewed enforcement of all human rights legislation by the Administration. Further, the Law Group hopes that the members of this Committee will continue to monitor the Administration's compliance with the statute prohibiting the importation of slave-made goods. Finally, the Law Group urges the appropriate Committees to undertake a general review of Administration compliance with all human rights statutes to overcome the Administration policy of malign neglect.

****

The International Human Rights Law Group is a nongovernmental organization of lawyers concerned with promoting human rights. In addition to educating the legal community, policy makers and the public regarding human rights norms, the Law Group has monitored the human rights situation in several countries, including Canada, Hungary, Nicaragua, Rumania, South Korea Sri Lanka, the United States and Yugoslavia.

FUND FOR STOCKOWNERS RIGHTS

Post Office Box 956
Vienna, Virginia 22180-0956
United States of America
703-281-9050

STATEMENT BY CARL OLSON
CHAIRMAN, FUND FOR STOCKOWNERS RIGHTS,
ON ENFORCEMENT OF BAN ON IMPORTATION OF
SLAVE-MADE GOODS.
SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE, UNITED STATES SENATE
9 JULY 1985

The Fund for Stockowners Rights is an educational organization whose purposes include the promotion of free enterprise in a Free World. This aim is accomplished thru the encouragement of stockowners to propose such policies for votes at their annual meetings, the publication of news reports on these subjects, and the study and comment on public actions toward making the world safe for free enterprise. "Stockholders for World Freedom" is a project of the Fund which focuses on threats to free enterprise in a Free World, especially the threats from the Communist Bloc countries.

The freedom of labor is a hallmark of free enterprise. Slave labor is a threat to free men everywhere. Slave labor is a commonplace practice of Communist regimes. The ban on importing goodsmade by slave labor is a highly desireable policy for America. Enforcing that ban is essential. The Treasury Department and its Customs Service are responsible for enforcing that ban. In addition, we believe that each corporation that is considering deals with any Communist Bloc regime should establish its own anti-slave labor policy with respect to both imports and exports.

Our observation of the attitudes of officials of the Treasury Department lead us to the conclusion that they are indifferent at best, and irresponsible at worst, regarding the enforcement of the ban on imports of slave-made goods. This conclusion is based upon close observation of events during the past few years, and the prosecution of a Freedom of Information Act suit against the Treasury Department over its slave labor enforcement files (for which I am personally the plaintiff, case 84-1315, U.S. District Court, Washington, D.C.). With regard to the Treasury Department's pursuit of a policy to enforce the ban on slave-made goods, it has relied extensively upon the findings of the Central Intelligence Agency, which has recently admitted its incapability to monitor the slave labor camp activity in the Soviet Union in sufficient detail so as to establish which products are made for export to the United States and other Western countries.

The boards of directors of several major corporations which have extensive dealings with Communist Bloc governments have explicitly stated their indifference and even hostility toward establishing an anti-slave labor

policy for their companies. When such anti-slave labor policies were proposed for adoption by the stockowners at annual meetings during the past three years, the managements and boards of directors actively campaigned against their adoption at these companies: IBM, General Electric, Exxon, PepsiCo, Control Data, and American Motors.

The current implementing regulations of the Tariff Act of 1930 ban on slave-made imports are rather restrictive and vague in some respects. There should be a vigorous program to revise them so that an energetic and conscientious enforcement of the ban can be quickly implemented.

Treasury Department Policies

In tracking the attitudes of Treasury Department officials on the enforcement of the ban on slave-made goods, the following observations can be made (many of which have arisen from the ongoing FOIA case which asked to obtain the slave labor files of the Treasury Department, including the Customs Service).

1. No operating manuals or policy memoranda whatsoever. Nowhere in the Treasury Department or its Customs Service is there an operating manual or policy memorandum for implementing this ban. In the 55 years since the passage of the Tariff Act of 1930, the only formal guidance has been in the implementing regulation (19CFR12.42) and an occasional ad hoc decision found in some of the 75-plus case files.

2. No interest by the Treasury Department to examine the question of enforcing the ban. The Treasury Department has made the unequivocal statement that it has absolutely no files whatsoever regarding policies on slave-made goods and the ban on their importation prior to September 1983. The Treasury Department even failed to contribute to the study that the State Department undertook for Congress in 1982-83 on the subject of slave-made goods and their possible importation into the United States, even though the Treasury Department is the responsible department for enforcing the ban. (Other departments, such as the Labor Department and the Central Intelligence Agency, did contribute to the State Department's reports dated 4 November 1982 and 9 February 1983 and addressed to Senator William Armstrong.)

3. No willingness to divulge its slave-labor files to the public. My request in June 1983 for the slave-labor files of the Treasury Department was first met by a combination of no substantive response from the Customs Service and a declaration from the Treasury Department that it didn't have any slave-labor files. By persisting with the requests, and filing suit in March 1984 (nine months after the original request), over 2,000 pages of files have been uncovered and disclosed, and another 1,000-plus pages are being withheld.

4. No interest in adopting new regulations or findings on slave labor. When certain findings or amendments to the regulations were proposed by the Commission of Customs William von Raab in September 1983 to facilitate the enforcement of the ban on slave-made goods, the Treasury Department delayed any decision on it until January 1985. In May 1984, it was announced that such a decision on the proposed improvements by Commissioner von Raab would be postponed until after the November elections. When the decision was announced in a memorandum dated January 28, 1985, and signed by the then-Secretary of the Treasury

Donald Regan, it was decided by the Treasury Department to keep secret the proposed findings and any counter-evidence (see Attachment 1). Thus the American public is being kept in the dark, and to our knowledge the Treasury Department has not allowed any new initiatives in the area of improving the enforcement of the ban on slave-made imports.

5. Inability of Central Intelligence Agency to provide information about slave-made products. In its review of the problem of slave-made goods, the Treasury Department relied heavily upon data and conclusions provided by the Central Intelligence Agency. Although the Soviet Union contains over 1,100 slave-labor camps involving 4 million prisoners, and although 1.2 to 1.5 million of those prisoners are engaged in manufacturing of items that could be and, in many cases, are exported to Western countries including the United States, the Central Intelligence Agency has confessed that its information-gathering machinery has been incapable of tracking the production of such goods and their destinations. (See Attachment 1.) The C.I.A.'s analysis covered only the Soviet Union, and did not address the other Communist Bloc countries, such as the People's Republic of China where an estimated 4 million prisoners are held in slave-labor camps (according to the International Trade Commission study of slave labor practices, December 1984, Publication 1630).

Major Corporation Directors' Attitudes

Rather than wait for vigorous enforcement of the ban on slave-made imports by the Treasury Department, several stockowners have sought to have their own corporations adopt anti-slave labor policies in their deals with Communist Bloc regimes. Resolutions to establish such an anti-slave labor policy were introduced and voted on at the stockowner annual meetings of IBM, General Electric, Exxon, PepsiCo, Control Data, and American Motors during 1983 thru 1985. Uniformly, the boards of directors not only fought to keep the resolution from ever coming before the stockowners for a vote, but actively solicited votes against the resolutions (which, as a result, were not passed). Additionally, these boards of directors showed their further indifference and hostility to the subject area by failing to offer any policies of their own.

The stockowner resolutions (see Attachment 2) would have established a quite comprehensive anti-slave labor policy with these features:

1. Refusal to buy slave-made goods.
2. Refusal to sell anything going to a slave labor facility.
3. Right of on-site inspection.
4. Active cooperation with government agencies.
5. Report to stockowners on implementation.
6. Donation of ½ of 1% of profits on deals with the Communist Bloc countries to assist refugees from those countries (included only in resolutions at IBM, Exxon, PepsiCo, and Control Data).

Management statements against the resolutions are in Attachment 3.

An analysis of these arguments by the boards of directors against establishing anti-slave labor policies for their own companies vis-a-vis the Communist countries leads one to the following possible interpretations:

1. They think the Federal Government ought to be doing more in the area of enforcing the ban on slave labor imports, thus creating a uniformly tough policy for all corporations to follow.
2. They really are indifferent to the slave labor content in imports and the use of their products in slave labor facilities. They are not interested either in the moral implications of their indifference or in the subversion of free enterprise that their indifference creates.
3. They secretly support the institution of slave labor in the Communist countries and hope to exploit it toward their own ends. This sort of mentality makes one wonder whether these boards of directors, if they had lived in the 1860's, would have either supported the Thirteenth Amendment to the U.S. Constitution abolishing slavery or have refused to aid the Confederate forces that were fighting a Civil War to maintain slavery.

Clarification of the Definition of the Ban on Slave-Made Imports

The ban prohibits the importation of "goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanction". In order to clarify the scope of the ban, the following interpretations ought to be addressed:

1. Does the Act's language include services as well as "goods, wares, articles, and merchandise"?
2. Does the Act's language concerning "wholly or in part" mean "in part no matter how small"?
3. Does the Act's language on "mined, produced, or manufactured" include any type of extraction from the ground, including gas, liquids, and solids?
4. Does the Act's language of "mined, produced, or manufactured" mean "mined, produced, or manufactured at plants, mines, gas or oil fields, or other facilities constructed or maintained wholly or in part by convict, forced, or indentured labor"?
5. Does the Act's language on "mined, produced, or manufactured" include "transported by convict, forced, or indentured labor" or "transported on, by or thru highways, canals, pipelines, airports, railroads, or other transport facility constructed or maintained by convict, forced, or indentured labor"?
6. Specifically in regard to the trans-Siberian pipeline, would the Act's language prohibit the importation of any gas transmitted

thru the pipeline if it were found that (a) the gas fields were explored, constructed, operated, or maintained wholly or in part by convict, forced, or indentured labor, or (b) the pipeline itself was surveyed, constructed, operated, or maintained wholly or in part by convict, forced, or indentured labor?

7. Specifically in regard to the Kama River truck factory, does the Act's language prohibit the importation of any item made there if it were found that the plant were surveyed, constructed, operated, or maintained wholly or in part by convict, forced, or indentured labor?

8. Specifically in regard to animal pelts, furs, and clothing made therefrom, does the Act's language prohibit the importation of such articles if it were found that they were produced at facilities utilizing convict, forced, or indentured labor or if the animals were found to have fed upon the unburied bodies of deceased convict, forced, or indentured laborers?

9. Specifically in regard to the Mischa teddy-bear type dolls for the 1980 Moscow Olympics, does the Act's language prohibit the importation of them if it were found that they were made wholly or in part by convict, forced, or indentured labor?

10. Does the Act allow for the confiscation of such prohibited goods once they have arrived and been distributed within the United States (including sale to retail customers)? Is there any mechanism set up for a product recall of this nature?

11. Are there any civil or criminal penalties that can be imposed for offenders, including corporate defendants?

THE SECRETARY OF THE TREASURY
WASHINGTON 20220

January 30, 1985

MEMORANDUM FOR WILLIAM VON RAAB
COMMISSIONER
U.S. CUSTOMS SERVICE

THRU: ASSISTANT SECRETARY WALKER

SUBJECT: Merchandise from the Soviet Union Which May be Produced by Convict, Forced, or Indentured Labor

On September 28, 1983, you recommended to me that a finding be published pursuant to section 12.43, Customs Regulations, to the effect that certain classes of merchandise from the Soviet Union which are produced by convict, forced, or indentured labor, either are being, or are likely to be, imported into the United States in violation of section 307, Tariff Act of 1930 (19 U.S.C. 1307). The categories of products covered by your original proposal were modified by your memorandum of December 2, 1983.

As you will recall, on May 16, 1984, I informed you that the evidence then available did not warrant a decision at that time to withhold any Soviet products from importation. My decision was based upon careful consideration of the available evidence and, in particular, the views of the Director of Central Intelligence on that information, which had been provided by the Central Intelligence Agency. In deferring a determination, I specifically chose to wait until the completion of the International Trade Commission's review of forced labor practices throughout the world.

The International Trade Commission issued its report on forced labor practices on December 18, 1984. After thorough examination of the report, I have concluded that it provides no additional evidence which might support a decision to prohibit the importation of any Soviet-produced goods into the United States. Indeed, the report further discredits the already meager evidence about two of the products identified in your recommendation. Furthermore, the ITC has expressly cautioned that its report is not intended for use as evidence in any administrative proceeding.

- 2 -

I have also received another letter from the Director of Central Intelligence which updates the CIA's views as originally expressed in May, 1984. This latest letter, a copy of which is attached, confirms that the CIA has continued to monitor information on Soviet forced labor practices and that the CIA still is not able to make a "solid case" that any specific forced labor goods are imported into the United States.

In light of the report of the International Trade Commission and the current views of the Central Intelligence Agency, I find that the available evidence provides no reasonable basis in fact to establish a nexus between Soviet forced labor practices, and specific imports from the Soviet Union. Consequently, based upon the evidence currently available to me, I have decided that there presently is no basis upon which to prohibit or withhold from importation into the United States any goods produced within the Soviet Union. Accordingly, your recommendation of September 28, 1983, is not adopted.

While this is a final decision with respect to your recommendation and the evidence currently available, it does not preclude the introduction at a later date of new evidence about the possible importation of Soviet products made by convict, forced, or indentured labor.

Donald T. Regan

The Director of Central Intelligence
Washington, D.C. 20505

17 January 1985

The Honorable Donald T. Regan
Secretary of the Treasury
Washington, D.C. 20220

Dear Don,

In the wake of the release of the ITC report on the use of forced labor in foreign countries to produce goods for export, I thought I should write you to update the status of our research on this issue. Despite continued monitoring, we are unable to obtain sufficient facts to make a solid case that any particular good we receive from the USSR is produced by convict, forced, or indentured labor.

You will recall that on 16 May I sent you a letter which stated that according to our most recent analysis 3 percent of total Soviet labor is forced. That analysis remains valid, but I can find nothing in the ITC report that indicates the availability of more specific data.

William J. Casey

Here are the actual letters in which the Treasury Department decided not pursue the slave labor import ban actively, and in which the C.I.A. declares itself ignorant of slave labor practices which involve any exports to the U.S.

It's important to note that the public has still not been told exactly what the Treasury Department has decided to reject as a course of action to enforce the ban--since it won't make public the 28 Sept. and 2 Dec. 1983 proposals from Commissioner of Customs William von Raab that are being totally rejected.

The public should write to ask for copies of these memos to:
Secretary of the Treasury James Baker
Department of the Treasury
Washington, D.C. 20220

The public should also write to the C.I.A. to ask for a copy of Director Casey's letter of 16 May 1984 on slave labor--which also is being held secret:
Mr. William J. Casey
The Director of Central Intelligence
Washington, D.C. 20505

ATTACHMENT 1

RESOLUTION OPPOSING SLAVE AND
FORCED LABOR IN COMMUNIST COUNTRIES

The stockholders hereby recommend that the Board of Directors adopt the following policy for all dealings with the Communist countries:

I. Goods or services produced in whole or part by slave or forced labor shall not be acceptable for delivery to the corporation, its subsidiaries, affiliates, or joint ventures. A suitable certificate of origin shall be required.

II. Goods or services to be provided by the corporation, its subsidiaries, affiliates, or joint ventures shall not be sent to or provided to any facility utilizing slave or forced labor. A suitable certificate of use shall be required.

III. The right of on-site inspection to determine the existence of slave or forced labor shall be vigorously pursued.

IV. The corporation shall cooperate promptly, energetically, and fully with the United States government and any international organization in their laws and policies to discourage the use of slave and forced labor.

V. A report to the stockholders shall be made in each annual report listing all contracts with Communist countries, any allegations made about slave or forced labor regarding them, any on-site inspections made or attempted, and the cooperativeness of the Communist country in this regard.

(For the purpose of this policy statement the term "Communist country" shall mean any of the following: Soviet Union, Lithuania, Latvia, Estonia, Poland, East Germany, Czechoslovakia, Hungary, Yugoslavia, Romania, Bulgaria, Albania, Cuba, Red China, North Korea, Mongolia, Macao, Tibet, Vietnam, Laos, Cambodia, Afganistan, and Angola.)

SUPPORTING STATEMENT FOR RESOLUTION
TO BE PUBLISHED IN PROXY STATEMENT

America abolished slavery in 1865, after a long and wrenching Civil War. It is a well established American tradition to oppose slavery wherever it is found.

Disturbing revelations have been forthcoming about slave and forced labor practices of Communist countries, especially the Soviet Union and Vietnam. The U.S. State Department has reported:

> "There is clear evidence that the Soviet Union is using forced labor on a massive scale. This includes the use of political prisoners. We have information from a variety of sources which confirms that the Soviets routinely employ a portion of their 4 million forced laborers, the world's largest forced labor population, as unskilled workers on domestic pipeline construction. ...
>
> "There is, in fact, a long history to the use of forced labor in the Soviet Union. This has included the use of forced labor—including thousands of political prisoners—on numerous large-scale development projects. The Baikal-Amur rail line, the Bielomorsk and Volga-Don canals, the Moscow subway, and the Kama River truck plant are a few of the better known Soviet projects built with forced labor."

Our corporation should have nothing to do with this heinous practice and should work diligently for its eradication.

ATTACHMENT 2

The following additional section was included in the resolution voted on at IBM, Exxon, PepsiCo, and Control Data:

"VI. The corporation shall make an annual donation or donations, earmarked for the assistance of refugees from Communist countries, to any group or groups rendering such assistance, in the amount totaling one-half of one percent of the annual profits made on contracts either to purchase goods or services from Communist countries or to sell goods or services to Communist countries."

ATTACHMENT 2

GENERAL ELECTRIC

Your Board of Directors recommends a vote AGAINST this proposal.

The Federal Government determines U.S. foreign policy and has adopted detailed laws and regulations governing international trade, including specifically trade with Communist nations.

Government agencies are charged with the responsibility for reviewing proposed transactions to ascertain whether they would be consistent with U.S. foreign policy. This policy distinguishes between different Communist countries and between different types of products in determining what transactions will be permitted. Any business GE does with these countries is conducted in careful accordance with the laws of our nation and with applicable U.S. regulations.

In addition to complying with applicable laws and regulations, GE itself takes into account social, political, economic and other factors which may affect its decisions on whether to engage in such international business transactions.

CONTROL DATA CORPORATION

CONTROL DATA'S RESPONSE

The Board of Directors recommends that you vote AGAINST or ABSTAIN from voting for this resolution.

Control Data's Board and management reject the argument that trading with Communist countries gives moral support or endorsement of their positions on human rights. Rather, they consider that trade can be a positive and strengthening method of spreading the ideals of the free enterprise economic system and democratic ideals.

The national interest in trade with Communist countries is continually monitored and regulated by the United States Government. The foreign policy aspects of trade are an exercise of the national regulations power of the United States Government. The Board and management consider the proposed resolutions inappropriate since they seek the usurpation of a responsibility of the Government in trade matters.

Compliance with any of the policies recommended by the proponent would be burdensome and costly. Since this proposal would impose a very costly burden on the company without any direct, offsetting benefit to the company or its stockholders, management recommends that you vote AGAINST or ABSTAIN from voting for this resolution.

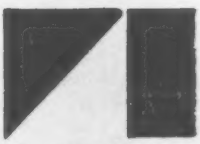
ATTACHMENT 3

IBM

The IBM *Board of Directors recommends a vote* AGAINST *this proposal.*

IBM business outside the United States is conducted in strict compliance with U.S. law and foreign policy. Business with Communist countries is limited by U.S. Government regulations as well as multilateral agreements among the U. S. and allied governments. These regulations take into consideration the particular country's internal policies and practices. In fact, total trade prohibitions by the U.S. Government are in effect for several of the named countries. IBM's business in 1982 in those named countries where trade is not proscribed amounted to less than 3/10ths of one percent of gross revenue.

While the proposal is well-intentioned, the Company believes this is a matter that is more appropriately dealt with by the U.S. Government. The proponent should pursue these objectives through officials in the Government, not through a stockholder proposal to IBM.



American Motors

The Board of Directors recommends a vote AGAINST the adoption of this proposal for the following reasons:

Insofar as it relates to activities of Renault, the proposal bears no relationship to the business of the Company or the interests of its stockholders as such. The Company opposes in principle any attempt to influence the business activities of its individual stockholders. No stockholder should be responsible to the Company or to any other stockholder with respect to the way he or she conducts his or her private business.

Insofar as it relates to the activities of the Company, the proposal, while well-intentioned, deals with matters of a political and diplomatic nature which are beyond the proper scope of the Company's business and corporate policy. In any event, the Company does not condone or knowingly participate in any business activities involving, directly or indirectly, the use of forced labor or the products of forced labor. Business between U.S. corporations and the foreign countries listed in the proposal is subject to extensive U.S. Government regulation and to international agreements. The Company conducts its overseas business in strict compliance with all applicable U.S. and foreign laws and international agreements. Any attempt to influence the internal policies of sovereign foreign countries is better left to the proper agencies of the U.S. Government in their conduct of U.S. foreign policy, and is not an appropriate subject for action at the Company's annual meeting.

Proxies solicited by the Board of Directors will be voted AGAINST the adoption of the above stockholder proposal unless stockholders otherwise specify in their proxies. The affirmative vote of a majority of the shares voting on the above stockholder proposal is required for its adoption.

ATTACHMENT 3

EXXON CORPORATION

BOARD OF DIRECTORS RECOMMENDATION - The Corporation's directors recommend a vote AGAINST this proposal.

It has been and will continue to be the policy of the Corporation fully to comply with all laws and regulations of the United States concerning trade with Communist countries. Within these limitations, the Board believes that the selected dealings by Exxon in goods and services sold to or purchased from Communist countries have been and may continue to be in the best interests of the Corporation, its affiliates, subsidiaries or joint ventures and of the non-Communist countries in which they operate.

The Board of Directors is opposed to the use of slave labor in any country, Communist or otherwise, but on-site inspections concerning alleged violations of human rights in foreign countries should be left to governments and intergovernmental agencies.

The Corporation has actively supported organizations that are dedicated to providing assistance to refugees throughout the world. Such support totaled $570,000 over the period 1980-82. The level of the Corporation's contributions is established by the Board of Directors and the general allocation of those funds is reviewed by a committee of the Board. In reaching a judgment on these matters, the directors consider many factors, not the least of which are the relative requirements of not-for-profit organizations. The establishment of a formula specifying a level of contributions for a specific purpose, ignoring the merits of other organizations' needs, which is recommended in this proposal, would impose an arbitrary and unnecessary constraint on Exxon's ability to respond effectively to those needs.

Accordingly, a vote AGAINST this proposal is recommended.

PEPSICO

The proposal of the Young Americans for Freedom ("YAF") is an obvious effort to involve PepsiCo's resources and annual meeting process in the accomplishment of YAF's political objectives. Management recommends that shareholders vote against this misuse of the shareholder proposal process.

ATTACHMENT 3

CAPTIVE NATIONS COMMITTEE of MASSACHUSETTS

82 Glen Road • Boston, Massachusetts 02130

June 18, 1985

Senator William Armstrong
United States Senate
Washington, D.C. 20510

Attention: Wendy Lechner

Dear Senator Armstrong:

This letter is to record the Captive Nations Committee of Massachusetts, of which I am Chairman, as being firmly committed to the enforcement of the law (U.S. Tariff Act of 1930, section 307) which prohibits the importation in whole or in part of goods or merchandise made by slave or convict labor.

Millions of prisoners in Soviet slave camps and prisons are engaged in the manufacture of goods and merchandise which are exported to Western nations, including the United States. This has been detailed in Congressional hearings by testimony of dissidents who have escaped to the West. This has been admitted by the United States State Department. The United States Customs Service sought to enforce the law after the KAL007 atrocity. However, these efforts by Commissioner Von Raab were sidetracked by the Treasury Department.

A State Department report released in February, 1983 by your Office revealed:

> "Forced labor...is used to execute various Soviet developmental projects and to produce large amounts of primary and manufactured goods for both domestic and Western export markets".

It is time that these products which are being exported to the United States are identified and prohibited. In short, it is time the United States Treasury Department order the Customs Service to enforce the law as required.

We agree with your assessment on February 14, 1983 that the "State Department Report's proof of massive use of forced labor and viscious treatment of forced laborers should trigger a comprehensive reexamination of Western trade policies with the Soviet Union.

Very truly yours,

Robert B. Zozula

ROBERT B. ZOZULA
Chairman (1-(617) 451-1300)
rbz/mlp

§ 1307. Convict made goods; importation prohibited

All goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactered in such quantities in the United States as to meet the consumptive demands of the United States.

"Forced labor," as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.

(June 17, 1930, c. 497, Title III, Part I, § 307, 46 Stat. 689.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law:

Corresponding provision in prior laws: Act Sept. 21, 1922, c. 356, Title III, § 307, 42 Stat. 937; Oct. 3, 1913, c. 16, § IV, ¶ I, 38 Stat. 195.

CODE OF FEDERAL REGULATIONS

19 CFR Part 12

MERCHANDISE PRODUCED BY CONVICT, FORCED, OR INDENTURED LABOR

§ 12.42 Findings of Commissioner of Customs.

(a) If any district director or other principal Customs officer has reason to believe that any class of merchandise which is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of the first sentence of section 307, Tariff Act of 1930,[1] he shall communicate his belief to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in paragraph (b) of this section, if in the possession of the district director or other officer or readily available to him.

(b) Any person outside the Customs Service who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the United States and, if the production is with the use of forced labor or indentured labor under penal sanctions, that merchandise of the same class is being produced in the United States in such quantities as to meet the consumptive demands of the United States may communicate his belief to any district director or the Commissioner of Customs. Every such communication shall contain, or be accompanied by, (1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, and (3) all pertinent facts obtainable as to the production of the merchandise abroad. If the foreign merchandise is believed to be mined, produced, or manufactured with the use of forced labor or indentured labor under penal sanctions, such communication shall also contain (4) detailed information as to the production and consumption of the particular class of merchandise in the United States and the names and addresses of domestic producers likely to be interested in the matter.

(c) If any information filed with a district director pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information is found to comply with the requirements, it shall be transmitted by the district director within 10 days to the Commissioner of Customs, together with all pertinent additional information available to the district director.

(d) Upon receipt by the Commissioner of Customs of any communication submitted pursuant to paragraph (a) or (b) of this section and found to comply with the requirements of the pertinent paragraph, the Commissioner will cause such investigation to be made as appears to be warranted by the circumstances of the case and the Commissioner or his designated representative will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.

(e) If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported, he will promptly advise all district directors accordingly and the district directors shall thereupon withhold release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation.

(f) If it is determined on the basis of the foregoing that the merchandise is subject to the provisions of the said section 307, the Commissioner of Customs, with the approval of the Secre-

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[1] "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to enter at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

"'Forced labor,' as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily." (Tariff Act of 1930, sec. 307; 19 U.S.C. 1307.)

the Treasury, will publish a ...ing to that effect in a weekly issue ... the Customs Bulletin and in the FEDERAL REGISTER.

(g) Any merchandise of a class specified in a finding made under paragraph (f) of this section, which is imported directly or indirectly from the ...ality specifed in the findings and ... not been released from Customs custody before the date of publication of such finding in the FEDERAL REGISTER shall be considered and treated as an importation prohibited by section 307, Tariff Act of 1930, unless the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding.

(h) The following findings made under the authority of section 307, Tariff Act of 1930 are currently in effect with respect to the merchandise listed below:

Merchandise	Country	T.D.
Furniture, clothes hampers, and palm leaf bags	Costed Victoria, Tamaulipas, Mexico	53408 54725

(Sec. 307, 46 Stat. 689; 19 U.S.C. 1307)

§ 12.43 Proof of admissibility.

(a) If an importer of any article detained under § 12.42(e) or (g) desires to contend that the article was not ...ned, produced, or manufactured in ...y part with the use of a class of ...or specified in section 307, Tariff ...ct of 1930, he shall submit to the Commissioner of Customs within 3 months after the date the article was imported a certificate of origin in the form set forth below, signed by the foreign seller or owner of the article. If the article was mined, produced, or manufactured wholly or in part in a country other than that from which it was exported to the United States, an additional certificate in such form and signed by the last owner or seller in such other country, substituting the facts of transportation from such other country for the statements with respect to shipment from the country of exportation, shall be so submitted.

CERTIFICATE OF ORIGIN

I, _____, foreign seller or owner of the merchandise hereinafter described, certify that such merchandise, consisting of _____(Quantity) of _____(Description) in _____(Number and kind of packages) bearing the following marks and numbers _____ was mined, produced, or manufactured by _____(Name) at or near _____, and was laden on board _____(Carrier to the United States) at _____(Place of lading) (Place of final departure from country of exportation) which departed from on _____; (Date); and that _____(Class of labor specified in finding) was not employed in any stage of the mining, production, or manufacture of the merchandise or of any component thereof.

Dated _____

_____
(Signature)

(b) The importer shall also submit to the Commissioner of Customs within such 3-month period a statement of the ultimate consignee of the merchandise, showing in detail that he had made every reasonable effort to determine the source of the merchandise and of every component thereof and to ascertain the character of labor used in the production of the merchandise and each of its components, the full results of his investigation, and his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components.

(c) If the certificate or certificates and statements specified in paragraphs (a) and (b) of this section are submitted within the time prescribed and the Commissioner finds that the merchandise is admissible, the collector of customs concerned will be advised to that effect, whereupon he shall release the merchandise upon compliance with the usual entry requirements.

(Sec. 307, 46 Stat. 689; 19 U.S.C. 1307)

§ 12.44 Disposition.

Merchandise detained pursuant to § 12.42 may be exported at any time before it is deemed to have been abandoned as hereinafter provided for. If it has not been exported within 3 months after the date of importation, the district director shall ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been so submitted, or if the Commissioner of Customs advises the district director that the proof furnished does not establish the admissibility of the merchandise, the district director shall promptly advise the importer in writing that the merchandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the district director, the merchandise shall be deemed to have been abandoned and shall be destroyed, unless it has been exported or a protest has been filed as provided for in section 514, Tariff Act of 1930.

(Sec. 307, 46 Stat. 689; 19 U.S.C. 1307)

§ 12.45 Transportation and marketing of prison-labor products.

If any apparent violation of section 1761 or 1762, title 18, United States Code,* with respect to any imported article comes to the attention of a district director, he shall detain the article and report the facts to the appropriate United States attorney. If the United States attorney advises the district director that action should be taken against the article, it shall be seized and held pending the receipt of further instructions from the United States attorney or the court.

*"(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(b) This chapter shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a Federal, District of Columbia, or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State." (18 U.S.C. 1761.)

"(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

"(b) Whoever violates this section shall be fined not more than $1,000, and any goods, wares or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property, imported into the United States contrary to law." (18 U.S.C. 1762.)

*"The term 'obligations or other security of the United States' includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposits, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any act of Congress, and canceled United States stamps." (18 U.S.C. 8.)

97TH CONGRESS
2D SESSION

S. RES. 449

Expressing the sense of the Senate with respect to human rights violations in connection with the construction of the trans-Siberian pipeline.

IN THE SENATE OF THE UNITED STATES

AUGUST 17, 1982

Mr. ARMSTRONG submitted the following resolution; which was referred to the Committee on Foreign Relations

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RESOLUTION

Expressing the sense of the Senate with respect to human rights violations in connection with the construction of the trans-Siberian pipeline.

Whereas the Soviet Union is proceeding with its plan to build the trans-Siberian pipeline, known as the Yamal pipeline;

Whereas there is Senate testimony that massive use of forced labor may be used by the Soviet Union to complete its construction;

Whereas there are first-hand dissident reports that there are four to seventeen million Soviet citizens now being held in some two thousand work camps in the Soviet Union and that there are persistent published reports of agreements to deport forcibly up to a half-million laborers from Vietnam to Soviet Union concentration camps in direct violation of international agreements;

Whereas the Vietnamese Government under the 1973 Paris Peace Agreements which were signed by former Secretary of State Rogers and North Vietnamese Foreign Minister Nguyen Duy Trinh guaranteed freedom of residence and freedom of work;

Whereas there is concern that political prisoners from Poland and other Soviet satellite countries may also be forced to work on the Yamal pipeline;

Whereas there have been estimates by Soviet dissidents of enormous loss of lives of workers forced to do the heavy, dirty, dangerous work in Soviet labor camps under subhuman conditions;

Whereas if allegations of forced labor prove to be true, the participation of the West in furnishing either technology or financing to make the construction of the pipeline possible is tantamount to unwitting collaboration by the West in one of the most massive abuses of human rights in history;

Whereas the United States stands, as it has always stood, in the forefront of the struggle for freedom and dignity of every human being: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Secretary of State should—

(A) investigate the extent to which forced labor will be employed and human rights violated in the construction of the trans-Siberian pipeline and to cooperate with other Western nations which also seek to investigate such violations; and

(B) report back to the Congress within thirty days with his preliminary findings and with a final report by January 1, 1983;

(2) the heads of the appropriate Federal agencies should take the steps necessary to assure that the United States is abiding by existing treaties respecting the importation of goods produced with slave labor.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 98th CONGRESS, FIRST SESSION

Vol. 129 WASHINGTON, WEDNESDAY, FEBRUARY 16, 1983 No. 15

REPORT TO CONGRESS ON FORCED LABOR IN THE U.S.S.R.

● Mr. ARMSTRONG. Mr. President, pursuant to Senate Resolution 449 enacted in the 97th Congress the State Department has reported to Congress on the use of forced labor in the Soviet Union. The report documents a brutal and systematic violation of basic human rights which appears to be a fundamental element in the Soviet political and economic system. I urge all my colleagues to study it carefully.

I ask that the State Department's "Report to the Congress on Forced Labor in the U.S.S.R." be printed in the RECORD.

The report follows.

U.S. DEPARTMENT OF STATE, UNDER SECRETARY OF STATE FOR POLITICAL AFFAIRS,
Washington, D.C., February 9, 1983.

Hon. WILLIAM L. ARMSTRONG,
U.S. Senate.

DEAR SENATOR ARMSTRONG: The Department of State is pleased to submit the accompanying report on forced labor in the USSR in compliance with Senate Resolution 449 and Conference Report No. 97/891 which accompanied H.R. 6956 of September 29, 1982.

Soviet forced labor practices have changed considerable since Stalin's day, but Soviet authorities still exploit forced labor on a large scale. The Soviet forced labor system gravely infringes internationally recognized fundamental human rights. Forced labor, often under harsh and degrading conditions, is used to execute various Soviet developmental projects and to produce large amounts of primary and manufactured goods for both domestic and Western export markets. As stated in our preliminary report of 5 November 1982, forced labor in the Soviet Union is a longstanding and grave human rights issue. The Soviet forced labor system, the largest in the world, comprises a network of some 1,100 forced labor camps, which cover most areas of the USSR. The system includes an estimated four million forced laborers, of whom at least 10,000 are considered to be political and religious prisoners.

In maintaining its extensive forced labor system to serve both the political and the economic purposes of the State, the Government of the Soviet Union—as discussed in the paper entitled "Legal Issues Relating to Forced Labor in the Soviet Union" (Tab 2)—is contravening the United Nations Charter and failing to fulfill its solemn undertakings in the Universal Declaration of Human Rights and the Anti-Slavery Convention of 1926.

Since our interim report on this issue was released in November, 1982, we have continued our efforts to gather information and have prepared several studies on particular facets of the issue. We have examined, for example, current Soviet forced labor law and practices as well as international law and agreements relating to forced labor. In addition, we have reviewed the human rights aspects of the issue and prepared an update of international labor activities regarding the Soviet forced labor issue. Finally, we have examined Soviet efforts to recruit voluntary workers to Siberia and explored the status of the growing number of Vietnamese workers in the USSR. Papers on these issues are included in the present report.

We also have followed closely the efforts of private organizations to develop further information. The International Society for Human Rights, based in Frankfurt, Germany held hearings on this issue in Bonn on November 18–19, 1982. Our summary of those hearings is included in this submission. The Society intends to release the full testimony, transcripts, and other documents early this year. We will ensure that this documentation is made available to the Congress.

We have examined further the Soviet authorities' use of broadly worded legislation against "anti-Soviet agitation," "hooliganism" and "parasitism" intended to intimidate, punish and exploit political dissidents and religious activists. As we stated in our earlier report, for nearly 30 years the International Labor Organization (ILO) has investigated allegations concerning these Soviet practices. The Soviet authorities refuse to provide responses satisfactory to the ILO. The United States believes that these issues need to be addressed and that the burden of proof is on the USSR. We reiterate, therefore, that to resolve this issue the Soviet authorities must open to impartial international investigation their entire forced labor system.

It is well known that forced labor has been used on pipeline projects in the past and we have evidence that it is being used now, as well, in domestic pipeline construction. As noted in our November, 1982 submission, a number of reports suggest that forced labor was used in the difficult and dangerous site preparation and other preliminary work related to the export pipeline. The media directed public attention to this matter, illuminating the Soviet Union's current forced labor practices. The publicity, we believe, has made Soviet authorities sensitive to the additional problems that would attend future exploitation of forced labor on the export pipeline project.

In early December, 1982 the USSR offered, and a delegation of Western trade unionists accepted, an invitation to observe ongoing construction of the export pipeline. While praising the visit, the official Soviet news agency TASS revealed on 10 December, 1982 that the delegation inspected only a single 300 kilometer section of the 4500 kilometer line; the inspection was performed largely by helicopter. One delegate—from a union ordinarily sympathetic to Soviet interests—later characterized the visit as a typical guided show tour of the USSR, and described the pipeline inspection itself as unsatisfactory.

The ILO has accepted "in principle" an invitation from the official Soviet trade union apparatus to send an on-site mission to examine charges of forced labor on the export pipeline. The ILO has received no formal invitation from the Soviet government itself, which bears official responsibility for Soviet international obligations. Whether such an invitation comes formally from the Soviet Government or from its official trade union apparatus, there is continuing concern that without assurances from the Soviet Government that it could conduct a full inquiry into the Soviet forced labor system, such a mission would not be in a position to secure full disclosure of the facts.

The situation of the growing number of Vietnamese workers in the USSR, under conditions which may violate agreed international labor standards, continues to be of concern. It appears that many of the workers enter the Vietnam/USSR labor program in order to escape the poverty and unemployment of present-day Vietnam. At the same time, however, there are reports that working conditions in the USSR are harsh and that net wages of the Vietnamese workers are lower than those paid Soviets doing comparable work. There is little doubt that a significant part of the Vietnamese workers' pay is sequestered to offset the Vietnamese Government's official debts to the USSR. Also the workers' communication with their families probably is monitored and constrained. Further it is unclear whether Vietnamese contract workers, who must make a commitment for up to seven years, may quit their employment and return home freely.

We have obtained no convincing evidence that Vietnamese contract workers are employed on the export gas pipeline project. The secrecy with which both the Vietnamese and Soviet governments have surrounded this labor program has made it difficult to monitor. Considering its inherent potential for abuse and the human rights issues involved, we will continue to follow this program closely and to encourage greater international scrutiny.

We have included in this report two detailed graphic representations of forced labor installations in the Soviet Union. One depicts the site of a gas pipeline compressor station under construction, the other a manufacturing site which incorporates the grounds and building of a former church. These materials derive from intelligence sources. We will continue to make available to the Congress further intelligence regarding the use of forced labor in the USSR. This will be done through the Senate and House Select Committees on Intelligence.

The last major United Nations global survey on forced labor appeared in 1963. That report of the UN Ad Hoc Committee on Forced Labor, which focused on the exploitation of forced labor for political or economic purposes, is discussed in the Legal Issues paper at Tab 2. Since the exploitation of forced labor remains an important international issue and infringes fundamental human rights, the U.S. Government considers it appropriate that in 1983—the 30th Anniversary of the Ad Hoc Committee Report—the international community again review this issue and rededicate itself to eliminating such practices.

Yours very truly,

LAWRENCE S. EAGLEBURGER.

REPORT TO CONGRESS ON FORCED LABOR IN THE U.S.S.R.

NOTE.—From the Report of the Ad Hoc Committee on Forced Labor, UN Document E/2431, Economic and Social Council, Sixteenth Session, Supplement No. 13 (May 1963).

(Charts and graphs mentioned not reproduced in the Record.)

"A system of forced labor as a means of political coercion . . . is, by its very nature and attributes, a violation of the fundamental rights of the human person as guaranteed by the Charter of the United Nations and proclaimed in the Universal Declaration of Human Rights. Apart from the physical suffering and hardship involved, what makes the system most dangerous to human freedom and dignity is that it trespasses on the inner convictions and ideas of persons to the extent of forcing them to change their opinions, convictions and even mental attitudes to the satisfaction of the State.

"While less seriously jeopardising the fundamental rights of the human person, systems of forced labour for economic purposes are no less a violation of the Charter of the United Nations and the Universal Declaration of Human Rights."

FORCED LABOR ON SOVIET CONSTRUCTION PROJECTS

The Soviet Union has used persons under sentence of forced labor to construct crude oil and natural gas pipelines and pumping and compressor stations (such as the one shown in the accompanying graphic). It has been reported that political prisoners are sometimes used to perform heavy labor, normally in isolated areas where heavy equipment cannot be used.

Parolees (forced laborers released from camps to serve the remainder of their sentences at construction sites) and probationers (forced laborers sentenced directly to construction sites instead of incarceration) are often housed at construction sites in mobile trailers, sometimes in fenced areas. Mobile trailers are not known to be used to transport and house prisoners, because standard prison security practices are difficult to duplicate at construction sites. Trailers used to house parolees measure 12 meters long by 2 meters wide by 2.5 meters high. Parolees and their trailer lodging move as the actual pipeline or pumping station construction is completed. Trailer compounds associated with pumping and compressor stations normally stay semi-permanent during the construction period.

Prisoners used on pipeline installation projects would ordinarily be transported back and forth from nearby prison camps in trucks. Prisoners are guarded during transport and at the work sites by armed Ministry of Interior (MVD) militia.

The accompanying graphics, which derive from intelligence sources, detail the physical layouts of two Soviet forced labor installations; one built around a pipeline compressor under construction, the other incorporating the grounds and building of a former church.

U.S. DEPARTMENT OF STATE,
Washington, D.C.

REPORT ON LEGAL ISSUES RELATING TO FORCED LABOR IN THE SOVIET UNION

I. CURRENT SOVIET FORCED LABOR LAW AND PRACTICES

A. Introduction

The Soviet Union's forced labor system, involving more than four million laborers under various conditions of detention, functions primarily as an apparatus for punishment of crimes, both common and political, but also as an important means of economic production.

All societies have some form of incarceration and, indeed, most attempt to employ prisoners in some form of gainful activity. The vast Soviet forced labor system, however, is distinguished by its large scale and the harshness by which it operates to threaten and punish those who are convicted of violating Soviet law, including those who attempt to assert freedom of speech, assembly or religion.

The Soviet system of charges and sentencing in effect classifies as crimes many political, religious, and cultural activities cited for

protection by the United Nations Charter and the Universal Declaration of Human Rights. The Soviet system of courts operates as an instrument of official policy at the direction of the Soviet Communist Party. Through these systems, the Government of the Soviet Union brings large numbers of individuals into its forced labor camp network in violation of their internationally recognized rights.

B. The role of corrective labor in Soviet law

Soviet policy on the use of corrective labor as punishment imposed by court sentence is set forth in the Soviet law entitled "Principles for Corrective Labor Legislation of the U.S.S.R. and Union Republics," which was approved by the U.S.S.R. Supreme Soviet on July 11, 1969.[1] This basic statute, as amended,[2] serves as a model for implementing legislation by Union Republics.

Soviet penal authorities regard corrective labor as an essential element of punishment in all sentences involving deprivation of freedom. The premise is that corrective labor rehabilitates the criminal and has a deterrent effect on others. The only exceptions to the general practice include minor misdemeanors involving very short terms in jail and a relatively small number of especially dangerous crimes the sentence for which specifies incarceration in a maximum security prison. Prison regimes are harsher than corrective labor camps and are reserved for recidivist hardened criminals and for some of the more important political prisoners.

Corrective labor may also be imposed as punishment without confinement to a camp; such sentences usually are imposed for lesser crimes or administrative offenses and involve terms ranging from one month to two years. The offender continues to work under close supervision at his usual job with a deduction of up to 20 per cent from his wages for the period of the sentence. He may be required to work elsewhere within his district of domicile. Of the unconfined individuals engaged in corrective labor, however, most by far are paroless, probationers, and individuals sentenced to penal "colony-settlements" who are usually sent to work in remote areas. They remain subject to incarceration if they violate the terms of their sentences.

Economic considerations play an important role in the Soviet corrective labor system. According to the official Soviet account, prisoners are expected to work so they will not be a burden on society while serving their sentences. Their pay is in theory commensurate with rates paid to free workers, but a substantial portion is deducted for food, clothing, and other expenses. Most corrective labor is performed in small manufacturing facilities within the confines of a camp, but it is also used routinely on major construction projects of all kinds, including dams, buildings, roads, railroads, pipelines, and timber cutting and hauling. Among the major projects on which forced labor has been used are military installations and to this extent forced labor plays a role in the Soviet defense effort.

We estimate the total Soviet penal population to be around 4 million—around 2 million incarcerated in labor camps, and another 2 million in the status of unconfined forced laborers (probationers, paroless released from labor camp, or individuals sentenced directly to a term of forced labor).

Most inmates in the Soviet penal system would in most any society be considered ordinary criminals convicted for common crimes. Some of the most comprehensive data on Soviet crime were provided by a former official in the Moscow Procurator's office. He has published in the West what appear to be official records on criminal convictions in the USSR: In 1976, Soviet courts sentenced 976,000 persons for serious crimes, and another 1,684,356 persons for lesser crimes and misdemeanors handled administratively or by "comrades' courts." The breakdown of serious crimes by category, however, does not provide a basis for estimating the number of crimes that could be categorized as political or religious.

The total number of persons convicted for political or religious offenses is not known with any degree of assurance. A report by Amnesty International and two other studies agree on an estimate of at least 10,000, but other estimates range much higher. One specialist in the field has compiled a list of 842 political prisoners (as of May 1982) known by him to be in various categories of confinement. This, however, is only the visible tip of the iceberg.

Thus, the Soviet economy has at its disposal a huge labor force that is cheap, flexible, and subject to discipline. It is especially suitable for deployment as needed for projects in remote areas with difficult climatic conditions, where authorities find it difficult to attract and hold free workers. When authorities need convict labor, they expect the judicial system to supply it.

The reliance of the Soviet economy on the availability of convict labor has had an insidious effect on the Soviet judicial system, which has always in any event functioned as an instrument of official Soviet policy. Soviet criminal courts operate under pressure to produce findings of guilt. As a result, authorities tend to adopt the attitude that the law enforcement organs, including the militia (police), the KGB, the Prosecutor, and the judge can do no wrong when implementing official policy; any questioning of the correctness of criminal charges or of the case presented by the prosecutor in court, even by defense counsel during the trial, tends to be regarded as a challenge to state authority. Given the fact that criminal cases in Soviet "peoples' courts" are tried without jury by a judge and two lay assistants, defense attorneys find it extremely difficult to obtain an acquittal in cases of ordinary crime, and even more difficult to do so when the case involves a political element. (In the view of Western specialists in Soviet law, Soviet courts have greater freedom to base decisions on applicable law and evidence only in cases involving civil law.)

Statistics on the number of convictions by Soviet courts on criminal charges involving a miscarriage of justice are of course not available. The evidence suggests that this number is high, even though some convictions in ordinary criminal cases are reversed on appeal. Individuals denied an opportunity to prove their innocence in courts—regardless of whether they face charges for ordinary crimes or prosecution essentially for political beliefs and activities—must be regarded as having been deprived of a basic human right.

Despite certain advantages of convict labor over free labor for work on large-scale construction projects in remote areas, its utilization presents some problems for the authorities. Soviet law and policy requires convicts who work outside the camp compound to be under constant guard and to be returned to the compound for the night. The authorities are also reluctant to permit persons convicted for serious crimes and "especially serious state crimes," including political prisoners, to work outside the camp compound. Such convicts are usually sentenced to "strict regime" or "special regime" camps and are not normally used for work outside the camp compound. The Law on Corrective Labor Legislation authorizes four categories of "correctional labor colonies" (i.e., forced labor camps); in order of increasing severity, these are: General regime (generally for first offenders), intensified regime (for first offenders serving terms of more than three years for premeditated felonies); strict regime (for individuals convicted of especially dangerous crimes against the State and for recidivists), and special regime (for especially dangerous male recidivists and men whose death sentences have been commuted).

In recent years, Soviet judicial authorities increased the practice of placing persons convicted for criminal offenses on probation instead of sentencing them to labor camp and assigning them to corrective labor in areas where their skills could be used. Procedures were also relaxed for paroling inmates of labor camps and converting their status to that of unconfined forced laborers. What the authorities needed was a more flexible category of forced laborers who could be used wherever needed without the restrictions applicable to convicts serving sentences in confinement. Therefore, this segment of forced labor began to expand.

In February 1977 the Soviet Government amended Par. 44 of the Statute for Corrective Labor Legislation to permit parole from a sentence of confinement, on condition that the paroles perform corrective labor "in locations designated by the appropriate organs empowered to execute the sentence."[3] This measure specifically did not apply to persons convicted for serious crimes, including "especially serious state crimes." The list of exclusions was further expanded by amendment of the Statute in July 1982.[4] Their effect was to disqualify from parole not only hardened criminals but persons convicted for political or religious offenses.

In effect, the penal system as presently constituted allows authorities to ship convicts to labor camps, where they are separated into categories. Ordinary criminals are usually kept in camp long enough to impress them with the rigorous conditions prevailing there; they are then offered the slightly more desirable option—on condition of their good behavior—to perform corrective labor without confinement in locations designated by the authorities. Their status becomes similar to that of indentured labor. Convicts deemed unsuitable for conditional release—a category including those sentenced for serious crimes, repeat offenders, and political prisoners—remain in labor camp for the duration of their sentence.

C. Political crimes, political prisoners

The Soviet regime denies that Soviet citizens are imprisoned for their political or religious beliefs or for exercising rights guaranteed under the Soviet Constitution. Nevertheless, citizens who express views contrary to official Soviet policies and views, or who act individually or as members of unofficial groups on behalf of their views, are subject to harassment, intimidation, and arrest. They frequently are charged with violating a number of vaguely-worded articles in the criminal codes of Soviet republics which severely restrict the exercise of basic political, religious, and civil rights, including those guarantees by the Soviet Constitution. Of course, all such constitutional guarantees are in any event expressly subject to the caveat that they may not be exercised "to the detriment of the interests of society or the state." (USSR Constitution, Article 39)

1. Political crimes:

Footnotes at end of article.

Article 24 of the Criminal Code of the Russian Soviet Federated Socialist Republic ("RSFSR")[4] defines the offenses covered in Articles 64-73 as "especially" dangerous crimes against the State." These include Treason (Art. 64), Espionage (Art. 65), Terrorist Acts (Art. 66), Sabotage (Art. 69), Wrecking (Art. 69), Anti-Soviet Agitation and Propaganda (Art. 70), and "Organizational Activity Directed to Commission of Especially Dangerous Crimes against the State and Participation in Anti-Soviet Organizations." (Art. 72).

Of these articles, only Article 70 is used frequently in prosecuting political dissidents, although others may be used in exceptional cases. For example, Anatoly Shcharansky, the Jewish activist and member of the Moscow Helsinki Watch Group, which was organized to monitor Soviet implementation of the Helsinki Final Act, was convicted on charges of treason (Art. 64) in July 1978 and sentenced to a term of 3 years in prison and 10 years of corrective labor. (Soviet authorities recently forced all Soviet Helsinki Watch Groups to disband.)

Article 70 defines "Anti-Soviet Agitation and Propaganda" as "agitation or propaganda carried on for the purpose of subverting or weakening Soviet authority or of committing particular, especially dangerous crimes against the State, or circulating for the same purpose slanderous fabrications which defame the Soviet State and social system, or circulating or preparing or keeping, for the same purpose, literature of such content." It prescribes punishment of "deprivation of freedom for a term of six months to seven years, with or without additional exile for a term of two to five years, or by exile for a term of two to five years." A record of previous convictions for "especially dangerous crimes against the state" increases the maximum sentence to ten years of imprisonment, plus exile for two-to-five years.

Prosecution of Soviet intellectuals in the 1960's under Article 70 proved awkward occasionally because it required the state to prove the defendant's intent "to subvert or weaken state authority." Consequently, Article 190 ("Failure to Report Crimes") was expanded in 1967 to include (190.1) "Spreading orally or in writing intentionally false fabrications harmful to the Soviet state and social system" and (190.3) "The organization or participation in group actions attended by obvious disobedience to legal demands by representatives of authority or which involve violation of the operation of transport, state or social institutions, or enterprises."

Article 190.1 did not require the state to prove intent to harm the system and was so loosely worded that it could be used to prosecute anyone making a statement deemed libelous by the state prosecutor. Conviction on such charges follows as a matter of course because, in practice in Soviet courts, the defense lacks the opportunity to rebut charges of libel through proof that the allegedly libelous statement was in fact accurate and truthful. For example, during the trial of Seventh Day Adventist Ilya Zvyagin in Leningrad in November 1980, the accused was charged under Article 190.1 with disseminating two Adventist documents, but these documents were not permitted to be read in court, nor was any description of their contents provided during the trial. The court simply accepted the prosecutor's charge that the documents libeled the Soviet system. The defendant was sentenced to two years in a general regime labor camp.

Similarly, charges under Article 190.3 could cover a wide range of challenges to the established order, including political demonstrations and strikes. Although the maximum sentence of three years' deprivation of freedom under 190.1 and 190.3 is lighter than the maximum punishment under Article 70, the authorities now have more leeway than previously in arresting and prosecuting political activists.

2. Parasitism and hooliganism:

"Parasitism" (i.e., the failure to engage in socially useful work) was not initially incorporated into the Criminal Code and was treated as a misdemeanor punishable as an administrative offense. In 1975, however, parasitism was added to Article 209 (prohibiting vagrancy or begging) and became punishable by a maximum of 2 years of deprivation of freedom. In October 1982 the maximum punishment was increased to 3 years for repeat offenders.

Paragraph 206 of the Criminal Code defines "hooliganism" as an intentional violation of public order and disrespect for society, punishable by up to one year deprivation of freedom or a fine not exceeding 50 rubles. In practice, hooliganism is a catch-all category including such offenses as disorderly conduct, brawling, and vandalism. "Malicious hooliganism," defined as a charge against a person previously convicted for hooliganism, or involving resisting an officer of the law, or as "distinguished in content by exceptional cynicism or impudence," is punishable by a maximum of 5 years' deprivation of freedom.

Charges of parasitism or hooliganism are frequently leveled against political activists. For example, an applicant for emigration who is discharged from his job as a form of harassment and then fails to find new employment within the prescribed period may be so charged. The fact that he is unable to find new employment because he has been effectively blacklisted by the authorities does not constitute a valid defense in court. For example, Estonian Methodist activist Herbert Murd was arrested in March 1980 on charges of parasitism after being expelled from a music conservatory. The basis for the charge appeared to be the fact that he had engaged in Christian work among young people. Shortly after completing his one-year labor camp sentence, he was again arrested, this time for alleged non-payment of alimony even though he had had no income after his release because he was systematically dismissed from every job he managed to find. Individuals engaged in unofficial or unacceptable occupations (such as teaching Hebrew or engaging in unofficial literary or artistic endeavors) may also face charges of parasitism.

Similarly, activists may be charged with hooliganism for publicly demanding the right to emigrate, or for meeting in an apartment and then arguing with a militiaman or other representative of authority who knocks on the door and demands that they disperse. In June 1978, for example, Jewish activist Vladimir Slepak, who has repeatedly been denied permission to emigrate from the Soviet Union, was convicted on charges of malicious hooliganism for hanging a placard outside his apartment balcony demanding permission to emigrate.

D. Economic crimes

Article 162 imposes a maximum sentence of 4 years' deprivation of freedom with confiscation of property for "engaging in a trade concerning which there is a special prohibition." Even conceding a socialist state's interest in regulating economic activities by prohibiting specific forms of private enterprise, the enforcement of this article with respect to individuals who attract the attention of the authorities for their nonconformity often involves prosecution on technicalities carried to unreasonable limits.

For example, in September 1979 a Leningrad court sentenced physicist and art collector Georgiy Mikhaylov to 4 years of corrective labor on charges of engaging in a prohibited occupation and ordered the destruction of his art collection. Mikhaylov was accused of preparing and selling to friends several slides of unofficial art from his private collection. He was found guilty even though an expert witness for the prosecution refused to testify that Mikhaylov's act constituted a violation of Article 162. In another example, Orthodox nun Vaseyna Makeyeva was convicted in April 1979 on charges under Article 162 because she made and sold belts embroidered with words from Psalm 90 ("He that dwelleth in the care of the Most High . . .").[5] Political or religious activists who engage in illegal printing and publishing may be prosecuted under Article 162, although they can also be charged under Article 70 (anti-Soviet agitation and propaganda) or 190.1 (slandering the Soviet system).

In addition, there are economic "crimes" whose commission is an inevitable consequence of fundamental defects in the Soviet economic system, which often leaves citizens with no legal alternative if they wish to lead anything like a normal life. If, as frequently happens, there is no feed available for farm animals, "the purchase in state or cooperative stores of bread, flour, groats, and other grain products to feed livestock and poultry" renders a Soviet peasant liable to "deprivation of freedom for a period of between one and three years, with or without confiscation of his livestock," under Article 154.1 of the Criminal Code. Other such "crimes" include "private entrepreneurial activity and acting as a commercial middleman;" for example, in the manufacture of spare parts which cannot be procured through legal channels.

E. Religious crimes

Soviet leaders cite the guarantees found in the Soviet Constitution as evidence that religious believers in the USSR enjoy full religious freedom. Article 52 of the Constitution adopted in October 1977 guarantees freedom of conscience and the right "to conduct religious worship or atheist propaganda," separates church and state and prohibits "incitement of hostility or hatred on religious grounds." Article 34 guarantees citizens equality before the law "without distinction of origin, social or property status, race or nationality, sex, education, language, attitude to religion, type and nature of occupation, domicile, or other status."

At the same time, the 1929 RSFSR Law on Religious Association (comparable laws also exist in other Soviet republics), as well as a series of other statutes and administrative practices effectively circumscribe these constitutional guarantees and impose Draconian restrictions on religious believers in the USSR. The effect of these restrictions and controls has been to place individual believers and religious associations under full state control by making them dependent upon state authorities for the exercise of their activities (indeed, for their very legal existence) and to undermine the organizational integrity of each religious denomination.

Any attempt by religious believers to assert freedom of conscience outside the scope of these controls thus automatically brings them in conflict with the authorities. Thus, the question of whether Soviet religious believers can be arrested, prosecuted and sentenced to long terms of corrective labor for actions they regard to be essential for the practice of their religious beliefs hinges on how religious freedom is defined by the laws and administrative regulations

of a regime committed to the implementation of atheism as state policy.

The Law of Religious Associations does not confer on religious denominations the status of public organizations as defined by the Soviet Constitution or the juridical status of a person-at-law.

Instead, the law reduces church-state relations to a local-level relationship between the state and each primary unit of believers (at least 20 persons acquiring official recognition through registration). This initial legal premise thus undermines the concept of an institutional church transcending a local area. Leaders of a religious denomination properly designated through the denomination's own internal procedures have no recognized status under the law, nor does the law require state authorities to deal with them, although in practice they may do so to the extent it serves regime interests. The law, moreover, is structured to inhibit church leaders from exercising effective control over affairs of the church, its hierarchy, or members. Church organizations cannot own property or inherit funds or property as other Soviet public bodies may. Religious "cults" have no specific legal right to maintain seminaries, publishing facilities, or other institutions, such as monasteries—they exist only by special permission.

Notable provisions of the law include the following:

No individual may belong to more than one "religious cult group" (Article 2).

Religious associations may not function unless they register with local authorities (Article 4). The procedure for registering and satisfying all other official requirements is complex and allows authorities—by refusing to register a group—to deny legal status not only to individual groups but collectively to an entire religious denomination. This has been the fate of the Eastern Rite (Uniate) Catholic Church and the Jehovah's Witnesses. Congregations of some religious denominations, such as the Pentecostals and Seventh Day Adventists, are denied registration on the grounds that they do not accept the limitations imposed on believers by the Law on Religious Associations. A legally functioning religious group ceases to exist if authorities withdraw registration. In effect, Article 4 can prevent a Soviet citizen from practicing the faith of his or her choice.

Individual religious groups may organize general meetings or participate with other groups in conferences or councils only with official permission (Articles 12 and 30). By withholding such permission, state authorities have prevented denominations from holding a general conference (e.g., the Jews) or establishing central administrative bodies (e.g., Jews, Moslems). In other instances, authorities have required such meetings to be held for specific regime purposes (e.g., the irregularly convened Council—Synod—of the Russian Orthodox Church in 1961, and the irregularly convened Congress—Sobor—of the Eastern Rite Catholic Church in 1946 which approved the union of the Church with the Russian Orthodox Church under regime pressure).

Registered religious groups must elect their executive body by open ballot (Article 13). Individual members of a group may be removed "by the registering agencies" (Article 14). These two articles provide authorities with the necessary leverage to control the composition and membership of each religious group and to manipulate its choice of leaders—hence, its activities and policies as well.

The law regards members of the clergy as persons hired by individual religious groups only for the performance of religious rites, a status which prevents the clergy from exercising a leadership role in a religious community. They also are wholly dependent on authorities for permission to practice their calling. Soviet law and administrative practices place at a special disadvantage those denominations (such as the Roman Catholic and Russian Orthodox Churches) where the priesthood is regarded as a sacrament, since official interference in ordination and appointment of clergy and in the discharge of their duties infringes on canon law.

Article 17 imposes a lengthy list of restrictions on the activity and rights of religious groups and members of the clergy: They may not engage in charitable, social, or "political" activities; organize prayer or study groups for adults or proselytize. Nor can they establish children's playgrounds, kindergartens, libraries, reading rooms, mutual aid societies, cooperatives, or sanatoriums. Neither the religious association nor its clergy can organize religious instruction for children; such instruction may be given only by parents to their children at home (Article 17).

The activity of clergy of a "cult" is restricted to the residential area of the religious association's members and the location of the "prayer premises" (Article 19).

Property necessary for the functioning of the "cult" is nationalized and under state control (Article 23).

Religious associations are denied property rights and may use "cult buildings" only by contractual agreement with Soviet authorities (Article 32).

"Prayer buildings" not under state protection as historical monuments may be used and resequipped for other purposes or demolished by Soviet authorities (Article 41).

All "cult property" is subjected to compulsory inventory by Soviet authorities (Article 56).

The performance of religious rites and ceremonies is not permitted in state, social, or cooperative institutions, although these rites and ceremonies may be held in "especially isolated premises" as well as at cemeteries and crematoria (Article 58).

Permission must be obtained from Soviet authorities before religious festivals can be held under an "open sky" or in the apartments or houses of believers (Article 59).

"Supervision" of religious associations is entrusted to the registering agencies (Article 64). Before the Law was amended in 1975, "surveillance" of religious associations, not "supervision," was entrusted to the "appropriate" Soviet authorities rather than "registering agencies."

The Law on Religious Associations prescribes relatively light penalties for violations: "Religious cult associations which have not fulfilled the requirements . . . shall be considered closed with the consequences provided for by the present Decree." A decree on "Administrative Liability for Violation of Legislation on Religious Cults" of March 1966 also imposes a fine not exceeding 50 rubles for violating enumerated prohibited activities. Persistent attempts by believers to organize religious groups and activities outside the provisions of the Law, however, may be prosecuted—and are in fact regularly prosecuted—under and are in fact regularly prosecuted—under general articles of the Criminal Code dealing with deviant behavior. These include Article 70 (Anti-Soviet agitation and propaganda), Article 190.1 (Circulation of knowingly false information), Article 190.2 (Organization of or active participation in group actions which violate public order), Article 162 (Engaging in a prohibited trade), Article 206 (Hooliganism), Article 209 (Vagrancy, begging and Parasitism), and Article 151 (Crimes against property of associations not constituting Socialist organizations).

In addition, Articles 142 and 227 of the Criminal Code are aimed specifically against religious activists. Violation of laws on separation of church and state and of church and school (Article 142) is punishable by three years deprivation of freedom for repeat offenders. A clarification by the Presidium of the USSR Supreme Soviet regarding the practical application of Article 142 explained that violations involving criminal responsibility shall include:

Compulsory collection of funds for the benefit of religious organizations or cult ministers;

The preparation for mass dissemination, or the mass dissemination of written appeals, letters, leaflets, and other documents calling for the nonobservance of the legislation on religious cults;

The commission of fraudulent actions for the purpose of inciting religious superstition among the masses of the population;

The organization and conduct of religious meetings, processions, and other cultic ceremonies which violate the social order;

The organization and systematic conduct of religious instruction to minors in violation of established legislation.

The infringement of rights of citizens under appearance of performing religious ceremonies (Article 227) carries a maximum punishment of 5 years deprivation of freedom. Religious actions infringing on the rights of citizens are defined to include:

Activities "carried on under the appearance of preaching religious beliefs and performing religious ceremonies" which can harm health or induce citizens "to refuse social activity or performance of civic duty, or draw minors into such a group . . ."

Active participation in such activities or "systematic propaganda directed at the commission of such acts."

Members of fundamentalist evangelical sects where religious practices may include faith healing, refusal of conventional medical treatments, trances, glossolalia, or other forms of religious exaltation are subject to charges under Article 142. Similarly, Article 227 allows the prosecution of believers who refuse to perform military service on religious grounds, or who induce others to do so, or who forbid their children to attend state schools.

The statutory limitations on freedom of conscience and religious activity impose on religious believers difficult moral choices. Many believers who attempt to stay within the letter of the law find the conflict between faith and law irreconcilable and choose to ignore the law. Such activists can be found in every denomination and some, such as the Roman Catholics in Lithuania and the Baptists exhibit a high degree of organization and achieve impressive results. In 1960, for example, Lithuanian Catholics sent Brezhnev a petition signed by 143,000 believers asking for the return of a church which had been constructed with official permission at the expense of Catholics in the town of Klaipeda and then confiscated by the authorities. (The petition evoked no response from the authorities.) In the early sixties, a sizeable group of Baptists broke with the officially-endorsed "All-Union Council of Churches of Evangelical Christians and Baptists" and established a rival—and illegal—"Council of Churches of Evangelical Christians and Baptists." The dissident Baptists could not accept State restrictions including the ban on religious instruction to children, State control over clergy and the content of sermons, and the prohibition against religious "propaganda." Despite arrests and harassments, they continue to defy the authorities and have even established a clandestine publishing house

producing printed unofficial editions of religious literature as well as two monthly journals and a bulletin issued by a "Council of Prisoners' Relatives."

While all religious denominations without exception are bound by the restrictions enumerated above, enforcement of the law is carried out with especial severity against the Soviet Jewish community. Alone among the recognized religious groups in the USSR, Soviet Jews have no functioning seminary for the training of clergy, no authorized religious publications, no national organization, and no approved ties with co-religionists abroad.

F. Other grounds for prosecution

Because of the extensive restrictions Soviet laws place on the exercise of individual rights, a Soviet citizen can hardly achieve the status of a political or religious activist without running afoul of one of the political or religious articles of the Criminal Code, and for this reason Soviet citizens who incur official displeasure often face charges under such articles. However, their individual circumstances may also make them vulnerable to a variety of other charges. The authorities readily use a legal pretext, however flimsy the evidence, or fabricate a case if they decide to act against an activist.

For this reason, the political essence of some trials is not apparent from the formal criminal charges, which may involve common crimes such as assault, embezzlement, or theft of state property. Such cases, especially if they take place in provincial areas, may not come to the attention of Western observers or be reflected in statistical data. At the same time, the Soviet penal system often treats activists convicted for ordinary crimes as common criminals rather than political offenders. They may be directed to serve their sentence in "general regime" corrective labor camps and may in time even qualify for leniency, parole, or amnesty which is usually denied to political prisoners.

It is possible, of course, that criminal prosecution of an individual who happens to be an activist may be justified on the basis of evidence in matters unrelated to his nonconformist views or behavior. Dissidents are not necessarily above reproach. At the same time, a large body of evidence accumulated over the years regarding the disposition of individual cases indicates that trials of political and religious activists are preprogrammed to achieve conviction of the defendant regardless of the evidence at hand. Such trials involve flagrant violations of declared Soviet judicial procedure. Defendants are prevented from preparing or presenting an effective defense. Even the decision about the length of the sentence may have been made before the start of the trial. In short, if the regime chooses to take punitive action against an individual, the question of his formal guilt or innocence is irrelevant.

G. Political prisoners, prisoners of conscience, and reform of "criminals"

Soviet authorities contend that Soviet citizens are never prosecuted for political views or religious beliefs, but only for criminal acts specified by the Criminal Code, and that therefore political prisoners do not exist in the Soviet Union in law or as a special category of the penal population. That contention is contradicted by evidence that activists convicted under the political or religious articles of the Criminal Code are treated differently during pretrial investigation and during the judicial process, and are subsequently singled out for especially harsh treatment during confinement.

The investigation of such cases is conducted by the KGB, which retains control over them and determines their disposition.

Persons convicted for "especially dangerous crimes against the State"—including those convicted for anti-Soviet agitation and propaganda (Art. 70)—are sentenced to "strict regime" (i.e., maximum security) corrective labor camps.

They are systematically denied packages, mail, and meetings with relatives to which they are entitled under prison regulations.

They run the risk of facing new criminal charges just before they complete serving a term of imprisonment if authorities do not wish to release them.

Upon completion of a term of corrective labor or internal exile, political and religious activists are often deprived of the right to return to their former city of residence. In effect, this perpetuates their exile status and they are forced to move from place to place in search of permission to establish legal residence. This has been the fate of Ida Nudel, the Jewish activist, who recently completed a four-year term of internal exile for "malicious hooliganism," She has been prevented from returning to Moscow.

Religious believers sentenced to a term of imprisonment are not permitted access to religious literature, not even the religious literature that is occasionally published in the Soviet Union with official permission. In 1982, Russian Orthodox activist Gleb Yakunin staged an unsuccessful hunger strike when he was denied permission to have a Soviet edition of the Bible in labor camp.

Life in corrective labor camps is made even more difficult for individuals who regard themselves as political prisoners or "prisoners of conscience" because they fail to meet the two basic criteria the penal system requires from inmates to qualify for privileges and leniency—admission of guilt and evidence of "reform." In the case of persons convicted essentially for political, religious, or nationalistic beliefs or other forms of intellectual nonconformity, "reform" in the eyes of the authorities would require renunciation of personal beliefs and public espousal of official ideology. Therefore, authorities regard those who refuse to do this as uncooperative and incorrigible, and not qualified to receive privileges, lenient treatment, early release, or consideration for pardon or amnesty.

An amnesty announced for the sixtieth anniversary of the U.S.S.R. in December 1982 carefully excluded not only serious common criminals, but also political and religious offenders. The amnesty did not cover:

Individuals convicted for especially dangerous state crimes (including Article 70) and recidivists (many political and religious activists, it should be noted, are repeat offenders);

Individuals convicted under Article 142 (separation of Church and State), Article 181 (engaging in a prohibited profession), Article 190.1–190.3 (slandering the Soviet system; organizing or participating in group activities violating social order), Article 206 (hooliganism), Article 209 (parasitism), and Article 227 (infringing on citizens' rights under guise of performing religious ceremonies).

The language of the amnesty decree states that an individual who organizes religious instruction for children or who circulates a petition protesting an official action is deemed more dangerous by Soviet authorities than one who commits assault, robbery, or rape.

The Soviet Government's official position regarding political prisoners was stated by First Deputy Chief Baghdin of the Central Committee's International Department at a press conference before the December 1982 amnesty was announced. He explained that the amnesty would not include political prisoners because there are none in the Soviet Union.

II. CONDITIONS UNDER WHICH SOVIET FORCED LABORERS WORK AND LIVE

Physical conditions in corrective labor colonies of the special regime, to which political prisoners often are sentenced, are usually harsh, and much more severe than the usual conditions in camps for common criminals. Political prisoners in an especially harsh special regime camp in the Mordovskaya region (see plate) are reported to be confined to cells holding between three and five prisoners each, with a bucket serving as a toilet. The wife of former Soviet political prisoner Alexander Ginsburg reported, after visiting him in 1978:

"The cell in which my husband and other prisoners are kept is so damp that water drips down the walls and the plaster is crumbling off. Mice run about in the cell." (*Prisoners of Conscience in the USSR: Their Treatment and Condition*, Amnesty International, London 1980, p. 111)

Barrack-type quarters are common in ordinary, reinforced, and strict regime camps. The room is overcrowded conditions, lack of ventilation, lack of sufficient heating during the cold months, and inadequate or unsanitary toilet facilities. Clothing is strictly limited by official regulation, causing numerous instances of sickness when prisoners are not permitted to wear warm clothes in addition to the inadequate regulation clothing.

Soviet authorities use the prison diet as a means of punishment. The regular diet itself is a form of punishment but may also be reduced in response to infractions of prison rules.

Article 10 of the RSFSR Corrective Labor Code reads:

"Convicted people shall receive food ensuring the normal vital activity of the human organism. Food rations shall be differentiated according to the climatic conditions at the location of the corrective labour colony, the nature of the work done by the convicted person and his attitude to work. People who are put in a punishment- or discipline-isolation cell, in a punishment cell, in the cell-type premises of colonies with ordinary, reinforced and strict regime and in a solitary cell in colony with special regime shall receive reduced food rations."

The official Commentary to Article 10 goes further:

"Convicted persons who systematically and maliciously do not fulfil their output norms of work may be put on reduced food rations."

Prisoners are theoretically permitted to receive extra food in the form of packages from the outside or by purchasing a few items from the camp commissary. Yet penal authorities often withhold this privilege, especially in the case of political prisoners. For example, penal authorities have repeatedly rejected packages sent to imprisoned human rights activist Anatoly Shcharansky by his mother; the authorities have also prohibited her from visiting Shcharansky.

There are also numerous reports of poor or nonexistent health care in the camps. One from the Chronicle of Current Events (No. 6, December 31, 1968) regarding the experience of the former political prisoner Vladimir Bukovsky relates circumstances that are reported to continue to exist:

"In October Vladimir Bukovsky was engaged when a pile of timber collapsed on him. He was unable to work as a result, but was accused of malingering and put in a

punishment cell. He started a hunger strike in protest. Against the usual rule he was put in a communal cell and his cellmates declared a ten-day hunger strike in support of him. Only after this was Rukovsky transferred to hospital for a while."

Additional information on conditions in Soviet forced labor camps is contained in a letter, dated October 25, 1982, from P. Paritskaya, wife of Soviet political prisoner Aleksandr Paritsky:

"My husband Aleksandr Solomonovich Paritsky, 44, a Jew, a refusenik, a scientist, candidate of technical sciences, having worked in the field of oceanology, was condemned by the Kharkov district court in November, 1981, and sentenced to three years in an ordinary-regime (corrective labor) camp.

"He was accused of having distributed slanderous fabrications denigrating the Soviet state and social system.

"Since February, 1982, he has been in camp no. 94/4 (near) the village of Vydrino in the Buryat autonomous Soviet socialist republic. Upon his arrival in camp, my husband was assigned very strenuous manual labor in a railroad tie factory.

"He was placed under special, constant supervision. Approximately 2,000 prisoners are held in the Vydrino camp. There, tuberculosis and (other) diseases are endemic. Last year, the death-rate reached 3 percent, and there were many traumatic cases since hygienic rules and techniques were not observed.

"The bodies of many prisoners were covered with perforated ulcers. Their clothing stuck to their bodies and had to be ripped off along with their skin. The prisoners are denied quality medical assistance.

"Forty-two kopecks a day are spent to feed (each prisoner). Their daily diet basically is about 700 grams of bread and three scoops (one scoop—200-250 grams) of porridge. At lunch soup is added to the porridge. Fat is almost, and vitamins are completely, absent from their diet.

"In the section of the barracks where my husband lives, about 75 persons are housed in one room.

"At the end of June, 1982, the chief of the zone Major M.N. Anikeyev called my husband in and demanded that he publicly recant and repudiate the idea of emigrating from the Soviet Union.

"When my husband refused to comply with this demand, Anikeyev cynically said that it made no difference, that he would force him to recant.

"Since the end of July, they have transferred my husband to work in the zone's so-called local industry and have assigned him to the job of transporting gun-carriage plates weighing as much as 200 kilos. Two unidentified persons travelled to the camp each day to ensure that my husband did only his work.

"On August 23, when my husband began to talk about himself at our meeting, they interrupted it, seized him, and put him in punitive, solitary confinement (SHIZO) for 15 days.

"Punitive solitary confinement occurs in a cell in the camp stie. Food is provided every other day. All warm clothing and underwear are confiscated. Bed linens are not provided. During the day, the sleeping area is cleaned. There, it is very cold, and even at night it is impossible to get warm.

"At our meeting, my husband was able to say that his blood pressure had increased to such an extent that he could not do all of his work, and so he refused to continue working. He had changed so much that it was hard to recognize him. His face was pale and emaciated; he had lost a lot of weight.

"After releasing him from solitary confinement, they again assigned him to his old job and then threw him back into solitary confinement.

"When I went to camp authorities on September 7, Major Sautin told me that my husband had high blood pressure and had been complaining about heart pains.

"My husband had no warm clothing, but winter already had begun in Buryatia.

"Despite that the procurator had ordered that my husband be allowed to receive things from me, the camp chief director refused to allow it, saying that the procurator had not instructed him to do so.

"I declare that my husband is undergoing the tortures of hunger, cold, and work beyond his endurance.

"They threaten him now with a new trial and a transfer to a prison regime.

"During the last two months, I have not received any letters from my husband, although his correspondence is not restricted. Even a package of warm clothing sent to him was returned.

"They subject him to all these insults to force him publicly to repudiate emigration to Israel. My husband at present finds himself in the position of a hostage.

[signed] P. PARITSKAYA".

III. FORCED LABOR AND THE SOVIET UNION'S OBLIGATIONS UNDER INTERNATIONAL LAW

International law distinguishes between forced or compulsory labor on the one hand and slavery on the other. In countries that have established permanent and extensive systems of forced labor to serve the economic as well as political purposes of the government, however, the distinction becomes in large part academic.

In the 1920's and 30's, the League of Nations evinced strong interest in the dangers that slavery and forced labor posed to fundamental human rights. Two multilateral treaties dealing with such matters—the Anti-Slavery Convention of 1926 and ILO Convention 29, both discussed below—were concluded in that period; both were ratified by the Soviet Union, and both remain in force today.[5]

A. The Anti-Slavery Convention (1926)

The Convention on Suppression of the Slave Trade and Slavery ("Anti-Slavery Convention") deals primarily with slavery but also notes that "grave consequences" may result from exploitation of forced labor. Resulting from a recommendation of the Temporary Slave Commission established by the League of Nations, the Anti-Slavery Convention was adopted by the Assembly of the League on September 25, 1926.

Article 1 of the Anti-Slavery Convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." It would violate the Anti-Slavery Convention for a State party to enforce a private property right in an individual as a slave.

The international community, through the Anti-Slavery Convention, recognized that the large-scale use of forced labor tends inevitably to undermine universally acknowledged human rights and called attention to the comparability of forced labor abuses and the crime of slavery. Article 5 of the Anti-Slavery Convention states:

"The High Contracting Parties recognize that recourse to compulsory or forced labour may have grave consequences and undertake each in respect of the territories placed under its sovereignty . . . to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery."

The Soviet Union's forced labor system comprises approximately four million laborers and constitutes an important element in the Soviet economy. Most major construction projects in the Soviet Union involve exploitation of such laborers. Soviet forced laborers work under conditions of severe hardship and some of the political prisoners in particular, suffer deliberate maltreatment. The scope and economic purposes of the Soviet Union's forced labor system and the abuses inflicted on forced laborers there support the conclusion that the Soviet Union is failing to fulfill its solemn undertaking in Article 5 of the Anti-Slavery Convention.

B. Forced Labor Convention (1930)

At the time of its adoption of the Anti-Slavery Convention in 1926, the Assembly of the League of Nations also adopted a resolution calling on the International Labor Organization (ILO) to study "the best means of preventing forced or compulsory labour from developing into conditions analogous to slavery."

Four years later, on June 28, 1930, the ILO General Conference adopted Convention 29—Concerning Forced or Compulsory Labor.

The term "forced labor," as defined by Article 2 of ILO Convention 29, comprises "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Forced labor does not necessarily involve private property rights in individuals.

States parties to ILO Convention 29 undertake to suppress the use of forced or compulsory labor in all its forms within the shortest period possible. ILO Convention 29 requires, *inter alia*, the abolition of forced labor for work underground in mines. The Convention lists a set of strict determinations that the highest civil authority in a given territory must make before that authority allows recourse to forced labor. The Convention mandates that (1) an individual's forced labor term not exceed sixty days per year, (2) a forced laborer receive prevailing wage rates, including overtime pay, and (3) a forced laborer work no more than normal hours, and receive the benefit of days of rest and holidays. Also in ILO Convention 29 are standards governing workmen's compensation, safety and health, and age limits for forced laborers.

For a discussion of the ILO's formal reproaches against the Soviet Union for violations of ILO Convention 29, see the U.S. Department of State's November 1982 *Preliminary Report to the Congress on Forced Labor in the USSR*, Tab 2 ("The International Labor Organization: Forced Labor in the Soviet Union").

C. Report of Ad Hoc Committee on Forced Labor (1953)

In the decades following the initial signing of the Anti-Slavery Convention, it became increasingly clear that those human rights which the Anti-Slavery Convention and ILO Convention 29 were drafted to protect are subject to the most salient and persistent violation in countries that have established actual systems for exploiting forced labor. On March 10, 1951, the UN Economic and Social Council ("ECOSOC") acted to expose such violations through adoption of its Resolution 350(XII).

In that resolution, ECOSOC stated that it was "deeply moved by the documents and evidence brought to its knowledge and revealing in law and in fact the existence in the world of systems of forced labour under which a large proportion of the populations of certain States are subjected to a penitен-

tiary regime." The resolution then invited the ILO to cooperate with ECOSOC to establish an ad hoc committee on forced labor "to study the nature and extent of the problem raised by the existence in the world of systems of forced or 'corrective' labour, which are employed as a means of political coercion or punishment for holding or expressing political views, and which are on such a scale as to constitute an important element in the economy of a given country, by examining the texts of laws and regulations and their application . . . and, if the Committee thinks fit, by taking additional evidence into consideration . . ."

and to report on the results of its study. According to the resolution, the Ad Hoc Committee's work was to be guided by the principles laid down in ILO Convention 29, "the principles of the (UN) Charter relating to respect for human rights and fundamental freedoms, and the principles of the Universal Declaration of Human Rights."

The resulting Ad Hoc Committee on Forced Labor, comprising individuals from Norway, India, and Peru, carried out its study for almost two years, issuing in May 1953 its comprehensive 600-plus page report on forced labor, UN Document E/2431. Economic and Social Council, Sixteenth Session, Supplement No. 13. The report is a meticulous review of the relevant legislation and the relevant judicial and penal practices of over 30 various countries against which allegations had been made regarding forced labor abuses.

After discussing the Soviet case in detail, the Committee report stated the following conclusions:

"Given the general aims of Soviet penal legislation, its definitions of crimes in general and of political offenses in particular, the restrictions it imposes on the rights of the defense in cases involving political offenses the extensive powers of punishment it accords to purely administrative authorities in respect to persons considered to constitute a danger to society, and the purpose of political re-education it assigns to penalties of corrective labour served in camps, in colonies, in exile and even at the normal place of work, this legislation constitutes the basis of a system of forced labour employed as a means of political coercion or punishment for holding or expressing political views and it is evident from the many testimonies examined by the Committee that this legislation is in fact employed in such a way.

"Persons sentenced to deprivation of liberty by a court of law or by an administrative authority, particularly political offenders, are for the most part employed in corrective labour camps or colonies on large-scale projects, on the development of mining areas or previously uncultivated regions, or on other activities of benefit to the community, and the system therefore seems to play a part of some significance in the national economy.

"Soviet legislation makes or places restrictions on the freedom of employment; these measures seem to be applied on a large scale in the interests of the national economy and, considered as a whole, they lead, in the Committee's view, to a system of forced or compulsory labour constituting an important element in the economy of the country."

The Committee report's general conclusions included the following:

A system of forced labour as a means of political coercion . . . is, by its very nature and attributes, a violation of the fundamental rights of the human person as guaranteed by the Charter of the United Nations and proclaimed in the Universal Declaration of Human Rights. Apart from the physical suffering and hardship involved, what makes the system most dangerous to human freedom and dignity is that it trespasses on the inner convictions and ideas of persons to the extent of forcing them to change their opinions, convictions and even mental attitudes to the satisfaction of the State.

"While less seriously jeopardizing the fundamental rights of the human person, *systems of forced labour for economic purposes* are no less a violation of the Charter of the United Nations and the Universal Declaration of Human Rights.

"Such systems of forced labour affecting the working population of fully self-governing countries result from various general measures involving compulsion in the recruitment, mobilization or direction of labour. The Committee finds that these measures, taken in conjunction with other restrictions on the freedom of employment and stringent rules of labour discipline—coupled with severe penalties for any failure to observe them—go beyond the 'general obligation to work' embodied in several modern Constitutions, as well as the 'normal civic obligations' and 'emergency' regulations contemplated in international labour Convention No. 29." (Emphasis in original; footnotes deleted).

These conclusions led to the adoption by UN bodies of several resolutions condemning systems of forced labor such as that existing in the Soviet Union. In Resolution 740(VIII), adopted on December 7, 1953, the UN General Assembly, "considering that systems of forced labour constitute a serious threat to fundamental human rights and jeopardize the freedom and status of workers in contravention of obligations and principles which it attaches to the abolition of all systems of forced or 'corrective' labour, whether employed as a means of political coercion or punishment for holding or expressing political views or on such a scale as to constitute an important element in the economy of a country." In Resolution 843(IX), its condemnation of such systems of forced labor.

The international community, primarily through the ILO, has continued to highlight the importance of abolishing systems of forced labor, especially those used for political coercion or for economic purposes. The ILO has been the principal UN agency overseeing forced labor since ECOSOC adopted Resolution 534(XVII) (April 27, 1954) calling on the ILO to continue its consideration of forced labor and to take whatever further action it deemed appropriate toward its abolition. Indeed, the ILO Committee of Experts has conducted three general surveys on forced labor since the 1950's, the latest one published in 1979; all have been critical of relevant Soviet law. In addition, the ILO General Conference of 1977 adopted a Resolution calling for the strengthening of the ILO supervision system for the application of international labor standards, particularly human rights standards such as those relating to forced labor.

D. Conclusion

In the period since the *Ad Hoc* Committee on Forced Labour issued its report, changes have been made in the Soviet Union's forced labor laws and practices. Soviet penal legislation today, however, still aims to punish individuals for their political views and for peaceful actions of an essentially political or religious nature. Moreover, in practice, Soviet authorities continue to use such legislation for that purpose. In Soviet courts, the rights of the defense, especially when political charges are involved, remain severely restricted. Soviet administrative authorities continue to possess and exercise extensive powers of punishment and corrective labor camp penalties continue to have as a goal the coerced alteration of the personal opinions of political prisoners. Furthermore, the Soviet Union's forced labor system remains an important element in the Soviet economy and forced laborers in the Soviet Union are still subjected to exceedingly harsh conditions and maltreatment. Thus, notwithstanding the changes in the Soviet Union's forced labor system since the issuance of the Ad Hoc Committee's report in 1953, the Government of the Soviet Union is persisting in practices that contravene the UN Charter and failing to fulfill its solemn undertakings in the Universal Declaration of Human Rights and the Anti-Slavery Convention of 1926.

FOOTNOTES

[1] *Vedomosti Prezidiuma Verkhovnogo Soveta SSSR*, No. 20 (1960), Art. 247.

[2] *Vedomosti SSSR*, No. 7 (1977), Art. 118; No. 33 (1981), Art. 907; No. 30 (1983), Art. 972; No. 43 (1983), Art. 782.

[3] *Vedomosti SSSR*, No. 7 (1977), Art. 118.

[4] *Vedomosti SSSR*, No. 30 (1983), Art. 972.

[5] Equivalent articles exist in the criminal codes of other Soviet republics, although their numerical designation may differ.

[6] *The Bible* (Russian-language edition of the Moscow Patriarchate, 1956).

[7] "Cult" is the disparaging Soviet statutory term for a religion.

[8] The United States is a party to the Anti-Slavery Convention, but not to ILO Convention 29. The United States Government has signed ILO Convention 29, but the Senate has not yet consented to ratification.

UPDATE ON ILO ACTIVITIES—DIRECT CONTACTS MISSION TO THE USSR

The International Labor Organization (ILO) has accepted "in principle" an invitation from the Soviet All Union Central Council of Trade Unions (AUCCTU) to send an on-site mission to examine charges of forced labor on the export pipeline. Arrangements for the ILO visit as well as its terms of reference have yet to be worked out. The invitation nevertheless marks the first time that the ILO may be permitted to conduct an on-site mission specifically concerning Soviet use of forced labor. The invitation should be viewed with caution, however, in light of the potential limitations, discussed below, on the mission's terms of reference.

BACKGROUND

On August 30, 1982 the International Confederation of Free Trade Unions (ICFTU) sent a letter to ILO Director-General Francis Blanchard requesting him to raise with the competent Soviet authorities the allegation that forced labor is used in the construction of the natural gas pipeline from Siberia to Western Europe. The ICFTU also requested that the matter be transmitted to the ILO Committee of Experts on the Application of Conventions and Recommendations.

The ICFTU letter did not constitute a formal complaint under Article 24 of the ILO Constitution, nor did it request that a direct contacts mission be established with the Soviet Union.

In response, the ILO informed the ICFTU on September 3 that its letter was being transmitted to the Soviet government with a request for comments on the issue. In addition, as requested by the ICFTU, the matter would be communicated to the Experts.

Later that month, while on a visit to the Soviet Union (September 24-October 4), ILO Deputy Director-General Bertil Bolin raised the matter of working conditions on the pipeline project. At that time Bolin was extended a verbal invitation by the official Soviet trade union organization to send a

mission to examine working conditions and the life of workers on the Siberian gas export pipeline. The invitation was formally confirmed by an October 25 letter from Vasili Prokhorov, Vice-President of the Central Council of Soviet Trade Unions and worker member of the ILO Governing Body (See Appendix 1).

The terms of reference of the mission, as stipulated in the Prokhorov letter, would permit one senior ILO official accompanied by two advisers to visit only the export pipeline. No mention is made of visiting labor camps in close proximity to the export pipeline, or camps elsewhere in the Soviet Union. In addition, it is not clear whether ILO officials would be able to choose the sites for visit, or that they would be able to talk privately with pipeline workers.

THE ILO REACTION

A. The Office

On November 3 during an interview with United Nations television, ILO Director-General Blanchard was reported by Reuter to have announced an ILO request to send a mission to the Soviet Union. In response to press inquiries concerning the Blanchard statement, the U.S. Department of State said on November 3 that it considered the ILO's request for a mission appropriate in view of the controversy surrounding the use of forced labor in the USSR. The Department stressed at the same time, however, that it is incumbent upon the Soviet authorities to disprove the numerous and grave charges concerning their use of forced labor—including that of political prisoners—by opening all of their labor camps and involuntary labor sites to international inspection.

The ILO announced receipt of the Soviet trade union invitation on November 9. Director-General Blanchard, however, denied that the ILO had actually solicited an invitation for a mission. The ILO issued a press release on November 10 in which Blanchard stated only that "the ILO is more effective when it can make on-site visits, not to conduct inquiries in the judicial sense, but to examine problems where they may arise" (See Appendix 11).

Following the ILO's announcement on November 9 of receipt fo the Soviet trade union invitation on that date, the Department noted that to be meaningful any invitation would have to have the full commitment of the Soviet Government to guarantee full access to the mission to investigate the charges.

In any event, the ILO must make a decision on how to deal with the Soviet trade union invitation. Many questions remain unanswered: Although Soviet trade unions are under total government control, it can be asked why the invitation did not come directly from the Soviet Government, which is responsible for the Soviet Union's international obligations? Would the Soviet Government disavow unfavorable conclusions on the basis that it was "not involved?" By contrast, would it exploit favorable conclusions as the "definitive statement" on forced labor in the Soviet Union? Will the mission be limited to preselected sites on the export pipeline?

There are considerable grounds for concern, as indicated already by the ICFTU and AFL-CIO, that as in the case of an ILO survey of the Soviet Union in 1949, a mission on Soviet forced labor would accomplish nothing or would be a "whitewash". (For conclusions of the 1949 Survey, see "History of the International Labor Organization," Antony Alcock, New York (1971), page 315). The U.S. Government, for its part, made clear in the statement by the Department of State on September 22, 1982 and in its transmittal letter to Congressional leaders on November 4, 1982, that in the light of the very serious allegations which remain unresolved, it is incumbent upon the Soviet Union to open to impartial international inspection its entire system of forced labor camps and projects.

B. The Committee of Experts

As stated above, the ICFTU's letter will be transmitted to the ILO Committee of Experts. Since the USSR ratified ILO Convention 29 on forced labor in 1956, the Experts examine Soviet application of this Convention on a biennial basis. The next session at which the Experts definitely will examine the issue of Soviet forced labor is in March 1984, by which time the biennial Soviet report is due.

However, as noted above, the ICFTU has asked the Committee of Experts to look into the matter which, if it so desires, it could do at its March 1983 session. The most that might normally be expected in 1983, however, would be a request from the Experts that the Soviet Government respond to the allegations by March 1984.

C. ILO June Conference

With regard to the annual ILO June Conference, it is possible that the issue of forced labor in the Soviet Union may be raised in June 1983 by a delegate during the general discussion on the application of standards. However, as a major discussion on freedom of association in all member States, including the Soviet Union and Poland, is scheduled for June 1983, the issue of Soviet forced labor may not be debated until the following Conference in June 1984.

RECENT CHRONOLOGY

June 18, 1982: Subcommittee on International Finance, Senator William Armstrong presiding, held hearings on Soviet labor practices.

August 1982: The German International Society for Human Rights (IGFM) issues a report entitled "The Use of Forced Labor on the Siberian Gas-Pipeline."

August 17, 1982: Senator Armstrong submits Resolution requesting the Department of State to investigate allegations concerning the use of forced labor on the Soviet pipeline.

August 30, 1982: The ICFTU sends a letter to ILO Director-General requesting that the ILO investigate allegations of forced labor on the Soviet pipeline.

September 2, 1982: ILO Director-General responds to ICFTU, indicating that it is transmitting ICFTU letter to Soviet government and to ILO Committee of Experts.

September 6, 1982: ICFTU publicizes its request of the ILO.

September 22, 1982: Department of State issues an official statement on the issue of Soviet forced labor, calling for the entire Soviet forced labor system to be opened to impartial international inspection.

September 29, 1982: Conference Report 97-691 directs the Secretary of State to report on allegations concerning the use of Soviet forced labor.

September 24-October 4, 1982: ILO Deputy Director-General Bertil Bolin visits the USSR and raises the issue of working conditions on the pipeline project.

October 26, 1982: Vasili Prokhorov, Vice Chairman of the Soviet All Union Central Council of Trade Unions (ADCCTU) sends a formal invitation to the ILO to send a mission to visit the pipeline.

November 2, 1982: ILO Director-General Blanchard holds interview with U.N. television.

November 3, 1982: Department of State issues public comment in response to inquiries concerning Blanchard's interview.

November 4/5, 1982: Department of State submits preliminary report to Congress.

November 10, 1982: ILO issues press release concerning invitation from Soviet trade union organization for a mission.

Appendix 1

[Press release of ILO, Nov. 10, 1982]

SIBERIA-EUROPE GAS PIPELINE

GENEVA (ILO News)—Following an interview given to United Nations television in New York on 3 November, during which he spoke, among other matters, of problems of conditions of work on the sites of the gas pipeline in the Soviet Union, Director-General Francis Blanchard of the International Labour Office wishes to make the following clarification:

Contrary to some of the comments to which this interview has given rise, among others from the United States, the Director-General limited himself exclusively to recalling the responsibilities of the International Labour Organisation, whose mandate is to watch over the application of international labour Conventions, and in particular the basic Conventions ratified by member States in the field of human rights.

Within the framework of this mandate it is the task of the International Labour Office to gather information from member States so as to enable the International Labour Conference and the supervisory bodies to discharge their responsibilities. The Director-General added, in this connection, that the ILO is more effective when it can make on-site visits, not to conduct inquiries in the judicial sense, but to examine problems where they might arise.

In this connection the Director-General wishes to publish the following letter, dated 25 October 1982, sent by Mr. Vasilli Prokhorov, Vice-President of the Central Council of Soviet Trade Unions, to Mr. Bertil Bolin, Deputy Director-General of the ILO:

"In the course of our talks in Moscow a question was raised in regard to ICFTU General Secretary O. Karsten's letter alleging that in this country prisoners' forced labour is used for building the Siberia-Western Europe gas-main.

"With a view of initiating a dialogue between the ILO and the Soviet Trade Unions on this matter I have already expressed our readiness to arrange for you and one or two advisers who may accompany you, to visit the gas-main construction site.

"On behalf of the ADCCTU I formally confirm hereby the invitation to visit the construction site of the Siberian-Western Europe gas-main at any convenient time and to become acquainted on the spot with the conditions of labour and life of Soviet workers employed at the above-mentioned project."

SOVIET EFFORTS TO RECRUIT WORKERS TO SIBERIA

The Soviet regime has from its inception mounted an advertising campaign designed to attract workers to Siberia and other labor-short regions of the USSR. This effort has consistently fallen short of its goal of attracting and holding labor in the numbers needed for this resource-rich area.

Siberia has always been sparsely populated. Despite the vigorous attempts made by both the Imperial and Communist governments to settle it during the 19th and 20th centuries, the region continues to be characterized by low population density. Siberia includes about 20 percent of the territory of the USSR, but in 1979 only 8 percent of the total Soviet population lived there. Even more striking, the Far Eastern region which occupies another 28 percent of the country's territory, contained only 2.5 percent of the

population. There has been a substantial increase in the number of people living in these areas since 1939, but because of population growth the elsewhere, the increase in the proportion of the Soviet population living in Siberia and the Far East has been negligible.

The natural increase in Siberia's population has not been sufficient to meet the area's manpower needs, and these deficiencies can only be made up through migration. But if the area's experience to date is any guide to the future, it will be extremely difficult to attract and retain enough workers to satisfy the planners. For example, in Tyumen' Oblast where energy development is concentrated, the population of two administrative sub-units almost quadrupled since 1959, growing from one-tenth to one-fourth of West Siberia's total. This massive influx does not, however, represent permanent or even long-term settlement. About 80 percent of the immigrants to Tyumen' Oblast during 1966-75 left, and the exodus is said to be continuing at about the same rate.

Incentive program

For more than 50 years the Soviet government has provided financial and other incentives to recruit workers to Siberia. Extra benefits for those willing to work in the northern regions were first made available by a 1933 decree for a "northern increment" to regular wages, longer annual leave, increased pension rights and certain privileges in housing and education. Wages were set 20-30 percent higher than the level prevailing in the European portions of the USSR. Other benefits included income tax exemptions for 5-10 years, free food and seed, home-building loans and the like. Despite the government's efforts, by 1959 it was found that the West-to-East resettlement program was not successful. The number of those leaving Siberia was greater than the number moving in.

A 1960 decree abolished the existing wage differentials, reducing benefits available to those thinking of moving to Siberia and to those already working there. This measure proved to be a mistake as it produced a mass exodus of workers; financial incentives to encourage migration were reintroduced by 1967. Further changes in 1969, 1972, 1973 and 1977 increased allocations for wages, pensions and other amenities, extending them to categories of workers not previously covered by the benefits, and making them applicable to all parts of Siberia and the Far East.

Those who leave for work in Siberia try to conclude contracts with particular establishments in advance, since in this case the law provides special benefits. Fundamental benefits include higher wages (1.5-4.0 times the national average), a bonus for a signing up, additional payments for seasonal unemployment, additional leave (1.5-2.5 times the national average), and extra time and money once every three years for a round-trip to a "place of rest." Supplementary benefits include special advantages in the calculation of pensions and disability payments, retention of the right to live in one's former place of residence, and payment of expenses (upon expiration of the labor contract or for some other valid reason) for the return trip of the worker and his family to his former place of residence. Agricultural resettlers in certain regions are offered similar incentives as well.

However, the promise of a better life and higher wages soon collides with the harsh realities of living in Siberia. The extreme weather and isolation, inadequate housing, limited social amenities, and high prices for food and consumer goods all contribute to worker dissatisfaction and high turnover.

Other employment alternatives

Because of Siberia's huge manpower needs required by the 1981-85 Five Year Plan, the Soviets will undoubtedly continue to rely on the traditional incentives approach to recruit workers to Siberia. However, the expense and limited success involved in establishing permanent settlements and the high turnover of workers have prompted the government to experiment with other employment schemes. They will increase the tour-of-duty and expedition methods of employment which rotate short-term workteams from established areas. These methods entail flying workers into makeshift settlements in the North from southern base cities (within Siberia for tour-of-duty method and from European U.S.S.R. for expedition approach) for a predetermined period and then returning them for rest and recreation before their next tour.

Other sources of labor for work in Siberia include some foreign workers, inmates from labor camps, and some unconfined parolees and probationers. There are, for example, forced labor camps located in West Siberia which are engaged in manufacturing and light industry. Recent evidence—including reports from the International Society for Human Rights—indicates that some unconfined forced laborers are used regularly in large construction projects—including domestic pipeline compressor stations.

"Help Wanted"

As an illustration of official Soviet recruiting efforts, the following is the complete text of an advertisement which was placed earlier this year in "Ekonomicheskaya Gazeta", a Soviet weekly which can be roughly equated with "Business Week", by a Soviet construction organization seeking to recruit engineers and skilled workers for pipeline construction work in the vicinity of the Urengoy gas field, the pipeline's Soviet terminus. The generous financial incentives offered free Soviet workers willing to sign up for such jobs, and the primitive living conditions they must endure, are graphically depicted in the ad.

(Begin Text) "In Tyumenskaya Oblast

The Prich'ruboprovodstroy Trust is hiring for work on trunk pipeline construction in North Tyumenskaya Oblast

Experienced specialists: professionally qualified overhead welders, category 6 operators of semi-automatic machine tools to weld pipes 1020-1040 mm in diameter; category 6 machine operators-pipe layers (KATO, KOMATSU), category 6 operators of EO-4121 hydraulic excavators, KATO machine operators; bulldozer operators (imported and Soviet-made equipment), category 6 foremen for fitters' brigades, drivers of MAZ-543 and KrAZ-256 truck tractors' defectoscope operators for narrow gamma-graphing; operators of Tyumen BT-361 marsh vehicles; TO-502 pipe layers;

Specialists with appropriate educational background and work experience: chief mechanics of administrative sections, deputy chief and senior engineer for the trust's Central Industrial Research Laboratory, heads and chief engineers of administrative sections, deputy chiefs of administrative sections, Mechanical Repair Shop mechanics, mechanics for imported equipment, radiography experts, budget engineers, senior engineers for the trust's wage and hour and administrative sections;

For line work on construction of trunk pipelines: senior foremen, foremen, experts, line mechanics to repair and operate construction equipment, automobile mechanics, convoy foremen and senior convoy foremen.

Specialists will be provided with housing for six months, and workmen will be provided with temporary living quarters in trailers or a dormitory on a first-come first-served basis.

The regional wage premium is 70 per cent, and the allowance for working in the North is ten per cent for every year of work. A lump sum payment of two months' salary is made upon signature of a three year contract, and additional preferential leave, including payment of travel costs, is granted once during the three years. Those working directly on the pipeline are paid a line bonus of 40 per cent, and housing is reserved for them at their place of permanent residence.

To be accepted for employment, send a certified copy of your labor book, a copy of your diploma and your personnel form.

Our address: Personnel Department of the Trust, pos. Igrim, Berezovskiy rayon, Khanty-Mansiyskiy autonomous okrug, Tyumenskaya Oblast 626806." (End Text)

FORCED LABOR AT THE SOVIET PIPELINE: HEARINGS HELD BY THE INTERNATIONAL SOCIETY FOR HUMAN RIGHTS (IGFM)

The German branch of the International Society for Human Rights (Internationale Gesellschaft fuer Menschenrechte, IGFM) based in Frankfurt and the International Sakharov Committee based in Copenhagen held hearings on November 18-19 in Bad Godesberg on Soviet use of forced labor to build gas pipelines.

The meeting was conducted jointly by its Honorary President, Alfred Coste Floret, a leader of the French International Society for Human Rights and former member of the Nuremberg War Crimes Tribunal, Dr. Reinhard Gnauck, President of the German IGFM, and Feleted Andresen, President of the International Sakharov Committee.

The "Examining Commission" included two Americans: Senator William Armstrong of Colorado and Mr. James Baker of the Paris office of the AFL/CIO. Other members were: Marcel Aeschbacher, from the Swiss Labor Movement; Professor Raymond Aron from the Sorbonne; Professor Felix Ermacora, University of Vienna; Hans Graf Huyn, CSU member of the German Bundestag; Detlef Lutz, from the Christian Labor Movement in the FRG; Ludwig Martin, from the International Commission of Torturists; Carlos Ripa Di Meana, Italian Socialist member of the European Parliament; and Victor Sparre, Norwegian writer and publisher.

Three preeminent exiles from the Eastern bloc served as expert witnesses: Georgij Daraydov, from Baku, in the West since 1966; Professor Andrzej Kaminski, from Warsaw, in the West since 1972; and Professor Michael Voslensky, formerly of the Soviet Academy of Sciences, living in the West since 1972. Represented by non-participating observers were, among others, Amnesty International, Freedom House, and The (Lutheran) Bishops Conference. The American, French, Dutch, and Belgian Embassies in Bonn were also represented. The International Press was fairly well represented, including West German television. There were in addition at most of the hearings some 100 to 150 others.

The IGFM distributed the following press release, in addition to the materials submitted earlier (The Use of Forced Labor on the Siberian Gas Pipeline: Documentation) for the August 1983 hearings. The IGFM expects to issue a report on the Bad Godesberg hearings in early 1983.

PURPOSE OF THE HEARING

This Hearing shall examine witness accounts about forced labor at the Soviet gas pipeline system. This huge network of pipe-

lines is under construction for decades already and western countries participate with their technology and credits for many years. For decades pipes are supplied, for instance. The credit from German banks on February 1, 1970 of 1.3 billion DM for this gas-pipeline deal was probably not the first and the 4.0 billion DM credit of July 13, 1982 might not be the last one. Already since October 1, 1973 Soviet gas reaches the Federal Republic of Germany. Therefore, the witnesses will have to be questioned about forced labor at the gas pipelines during the last 10–15 years.

Building a network of pipelines does not consist only of welding tubes and laying them into the ground—this is only one step, usually done by computerized machines. Preparatory and other work for such a huge construction site has to be done also—cutting trees, draining the ground, preparing roads and telephone connections, building shelter and factories, sewing workmen's clothes, unloading trucks etc. The witnesses shall report about these works also.

The results of this Hearing will be presented to all governments concerned and to the world public, in order that a moral decision can be reached about continuation of the cooperation with the USSR on this industrial project.

Dr. Med. Reinhard Gnauck,
Chairman, IGFM.

(IGFM translation)

EXAMPLE OF TESTIMONY AT THE HEARINGS

Statement

I, Wladimir Grigorjewitsch Tilow, was born 1936 in the village Woroshovgro, district Ljudinowsk, area Kaluga. I had a higher technical education and completed a training in a KGB-school. I am a KGB-lieutenant. But my conscience did not allow me to commit unlawful acts and harm good people, i.e. to actually serve the KGB. Therefore I tried to leave the KGB. For attempting this I was sentenced to 10 years in prison and psychiatric confinement according to § 70 of the penal code of the RSFSR. Even after this 10 years I was persecuted cruelly. I was beaten to unconsciousness, my bones were broken, I had to be hospitalized. I was refused any job and I starved. The KGB tried to provoke me and watched me continuously, other people were instigated against me, relatives likewise. The only way out of this true hell was to emigrate from the USSR on invitation from Israel. The KGB promised mercy and would let me go. Israel sent another invitation for my wife and daughter. With great hope I started to collect the necessary documents for our emigration. But another torture was started by the KGB—again and again they tried to enlist me to work for them abroad. For 8 months I was dragged to conversations, instructions, had to take oaths and received promises from the highest ranks, the generals of the KGB. In September 1981 Lieutenant General Zwigun personally talked with me about working for the KGB abroad. The telephone number of the main agent, conducting this campaign, Juri Semenowitsch, Major for special services, is 2-22-00-22. Their friendly talks were mixed with threats to persecute my relatives in the USSR and to forbid me abroad. I could not stand this devilish scheme and refused any cooperation. Once more I lost my job. I received an order from a psychiatrist and was declared mentally ill. My situation is desperate. These are the conditions here and such is our life in the USSR.

(Signed) Wl. Tilow.

Moscow, October 1982.
(IGFM translation)

SUMMARY OF PRIVATE LETTERS OF W. TILOW SENT TO FG. BELOW, OCTOBER 1982

In 1962 I have been working on the construction line Bochara-Ural (gas supply pipes) as manager of a sector for mounting and installing controlling and measuring devices as well as automatic machines. Here, as nearly everywhere, prisoners are doing the hardest work. From 1960 to 1961 I have been working in the district of Tjumen on gas pipes installing controlling and measuring devices as well as automatic machines. Here as well prisoners did work coming of Hero as well prisoners did work coming of the concentration camps of Surgut, Nadym, and Urengoi. These camps are situated in impassable marshland. In summer they (the prisoners) will be transported in helicopters of the type MI-6 and MI-10 to the constructing line, squeezed together like "herrings", in winter with vehicles and helicopters. Among the prisoners there are many specialists with higher education, they are working as chief operators and brigadiers. Working with prisoners requires a special permit of the militia for these finding themselves in free working conditions. Unrestrained violence is the rule. Economic benefit is obvious.

When I have been for the last time on a reception on Dsershinski place with high-ranking people of the KGB, they insulted me for some time because of my refusal to work for them abroad, and they told me: "We shall let you putrefy, we shall let you putrefy for a long time. Nobody will us declare the war because of you, all will be running down from us like water."

Within a short time they will arrest me. In what kind of torture-chamber they will bring me—I don't know.

On 11th November 1982 news came by telephone out of dissident circles in Moscow, that W. Tilow has been arrested at the end of October and sent into the psychiatric clinic at Kaluga, department 7, where he will be subject to a forced treatment.

(IGFM translation and summary)

CONCLUDING STATEMENT

Statement of the International Commission on Human Rights in Conclusion of the Hearing 'Forced Labour—Siberian Pipeline', November 18./19., 1982, in Bonn—Bad Godesberg (Stadthalle).

The Hearing was arranged by the International Society for Human Rights (ISHR), Frankfurt, in cooperation with the International Sakharov Committee, Copenhagen. Presiding was Mr. Alfred Coste Floret, a joint prosecutor for France at the Nuremberg trials.

Based upon the testimony of expert witnesses and upon the testimony and documents of former Soviet prisoners, the Commission finds:

1. The USSR continues the deplorable practice of forced labour in manufacturing and construction projects including the Siberian Gas Pipeline.

2. Prisoners, including political prisoners and those imprisoned for their religious beliefs, among them women and children, are forced to work under conditions of extreme hardship including malnutrition, inadequate shelter and clothing and severe disciplins. Many prisoners have died.

The Commission calls upon the Soviet Union to end the vicious practice of forced labour and upon all nations and enterprises for support of our conclusion.

We have presented the truth to the world and no one can say: "I did not know."

(IGFM translation)

PRESS ACCOUNTS

Some of the press reports of the hearings:

"Witnesses: Forced Labor Building Gas Pipeline," *Süddeutsche Zeitung*, November 19

—In Bonn on Thursday, the International Society for Human Rights (IGFM) addressed an appeal to European Governments to show restraint in the European-Soviet Gas Pipeline deal notwithstanding the lifting of U.S. sanctions. All Western Governments, banks and firms should be advised with even greater emphasis than before that they were participating in the exploitation of forced labor said IGFM Chairman Reinhard Gnauck (Frankfurt) at the opening of a two-day hearing on the alleged use of forced labor in the construction of Soviet gas pipelines.

—At the hearing, sponsored jointly by the IGFM and the Sakharov Committee (Copenhagen), former Soviet prisoners and experts now living in the West reaffirmed statements already published by the Conservative Human Rights Society, that political as well as other prisoners are used in the construction of Soviet gas pipelines. Even female prisoners were required to work under the worst conditions in the construction of the gas pipelines, either directly or indirectly, by making prisoners' garments, reported a woman from Leningrad who had been imprisoned in a camp near Workuta (Siberia).

—Witnesses also reported on the bad food situation, insufficient clothing and accommodation as well as on lack of medical care. There were many deaths in camps alongside the gas pipeline, among them a number for women encountered, witnesses said. According to these reports, each camp has from 700 to 3,000 inmates, whose working hours total up to twelve hours per day, sometimes also up to 16 hours. Non-compliance with the work norm results in solitary confinement. Moreover, prisoners are not allowed to be visited by relatives or write letters. In many camps, prisoners were allowed access to a washroom only once a week. Often prisoners were compelled to wash themselves with the same water others had already used. Because of inadequate hygiene, prisoners were frequently vermin-ridden and there were epidemics to which many prisoners fell victim. Nourishment of the slave laborers was often totally inadequate. Also there was talk of "sexual terror" to which the women were exposed in camp.

(Abridged text)

"Human Rights Fighters Call for Restraint in Trading with the USSR," *General-Anzeiger*, November 19

The Bonn *General-Anzeiger* cited several exiled Russians who testified at the hearings on their use as forced laborers in the construction of the Siberian gas pipeline. Victor Cosko, an 81-year old exiled Russian who said that he worked "on the Siberian gas pipeline ten years ago," is quoted as having seen frequently "prisoner camps alongside the individual building sites." He also reported that "in some cities registered prisoners outnumbered residents four to one." Prisoners were often required to work 16 hours a day under most inadequate food conditions, Cosko said.

Forty-two year old author Julia Wonsowskaja confirmed these statements, saying that she had to spend two years of confined labor because of "slanderous remarks" in her books. She said that about 40 other women were confined in the camp with her and "no one of them left it healthy." They had to work in bitter cold, "lightly dressed, without a sweater" and had also been subjected to "sexual terror." Wonsowskaja said.

Statements by other witnesses spoke of many camp inmates falling victim to epidemics because of inadequate hygiene. Those who were weakened because of malnutrition and could not complete their work norm were subjected to special confinement. Visits by next-of-kin were stopped and no prisoner dared to register a complaint.

General-Anzeiger says that the organizers of the hearing thought it of special importance to prove that political prisoners were also used in preparatory work for the gas pipeline construction. Introductory statements by Georgij Davydov, who spent seven years as a prisoner, served this end. He confirmed use of political prisoners in all preparatory work for the gas pipeline. This applied especially to chemical and pre-metallurgic industries, Davydov said. He reported that the Soviets pardoned about 35 percent of the 10,000 prisoners in Estonia under the prerequisite of their signing up for work on the gas pipeline. According to Davydov, prisoners also "participated" in a similar way in the building sites for the Tallinn Olympic games.

Reinhard Gnauck, Chairman of the International Society for Human Rights, emphasized in his statement that all Western Governments, banks and firms should be advised that they were "exploiting slave labor-ers." Gnauck made an urgent appeal to all responsible authorities for restraint in gas pipeline supplies to the Soviets.

(Summarized by U.S. Embassy, Bonn)

Agence France-Presse Dispatch, "Detainees Working on Soviet Gas Pipeline," *La Suisse*, November 19

"Labor-camp inmates are working on the construction of the Siberia-to-Europe gas pipeline. Eyewitnesses testified at Bonn yesterday to an International Commission of Inquiry on the employment of political prisoners on the project. Prisoners sentenced to hard labor are working on the construction of the pipeline, said Mr. Machmet Kulmegambetov, in one of the first testimonies heard by the Commission, whose Chairman is French jurist Alfred Coste-Floret, former assistant prosecutor at the Nuremburg trials.

"Mr. Kulmagambetov was put onto the building of compressor stations when undergoing a period of internal exile for 'anti-Soviet agitation'. He said that detainees at the Surgut labor camp, between Urengoi and Tiumen, were brought daily in special vehicles to work on the gas pipeline sites.

"Mr. Kulmagambetov, a former Professor of Marxist-Leninist philosophy, worked for six years on gas-pipeline sites. As proof, he showed the Commission his official work permit, recording where he spent his internal exile.

"Earlier, the Commission had heard the testimony of Mrs. Julia Vosnesenskaya, a Soviet writer condemned in 1970 to five years' exile for 'defamation of the Soviet State.' She said she had personally known women sentenced to forced labor who were put into making clothes for detainees working on the gas pipeline. She also described conditions in the labor camps for women, where the inmates had to work twelve hours a day—suffering from cold and hunger but especially from the 'sexual terror' inspired on them by the guards."

(Abridged text)

J. B. Bilka, "Witnesses Confirm Forced Labor," *Die Welt*, November 19

Eyewitnesses have confirmed indications that forced labor is being used in the construction of the Soviet gas pipeline between Siberia and Europe. At a two-day hearing sponsored by the International Society for Human Rights (IGFM), former Soviet camp inmates pointed out in Bonn yesterday that working conditions for the slave laborers were frequently inhumane, the required work norm excessive and punishment for even the smallest misdemeanor was harsh.

Clarification of the special problem of the Soviet system of forced labor required an initial analysis of the accompanying circumstances from a historico-political point of view. Thus, at the start of the hearing, the three experts Georgij Davidov (Munich), Professor Andrzej Kaminski (Wuppertal) and Professor Michail Voslensky (Munich) discussed the legal and historical classification of forced labor in the Soviet Union, "Slave Labor in Totalitarian Regimes" in general and "Forced Labor in Practice."

Paragraph 60 of the Constitution of the USSR specifies the duty to work as "socially useful activity" for each Soviet citizen. In the Penal Code this had been reinterpreted as compulsory work. Compulsory work may entail hunger, cold, being kept from sleeping, physical terror and other privations.

The first witness called to testify was Julia Wosnesenskaja (Rosenzweig), a civil rights activist, who departed from the USSR in July 1966. She reported on the inhumane working conditions in women's camps.

Civil rights activist Mechmet Kulmagambetov (Munich), who comes from Kazakstan and left the USSR in September 1979 with an Israeli visa, presented as documentary evidence his work log with an official stamp revealing that he was used as slave laborer in the construction of the gas pipeline.

(Full text)

VIETNAMESE "EXPORT" OF WORKERS TO THE USSR AND EASTERN EUROPE

Summary

Reports have been received that some of the Vietnamese now working in the USSR are employed under harsh—and, in some cases, involuntary—conditions. The following brings together the information available to the Department of State on this issue.

Since 1981, the Government of Vietnam has sent Vietnamese citizens to work on a variety of projects in the USSR and Eastern Europe under unpublished intergovernmental agreements that are not part of long-standing training and study programs. Estimates from a variety of sources for the 1981-1985 period range from 100,000 to 500,000 workers. Communist media reveal that about 45,000 already are in place, including 11,000 in the Soviet Union. There is little doubt that the Vietnamese work for fixed periods—labor contracts are said to extend up to seven years—in a capacity similar to indentured status, with a substantial portion of their wages withheld to be credited against Hanoi's mounting deficits in these countries. The technical terms of employment evidently are spelled out beforehand when the worker signs a contract with the Hanoi government, although precise working and living conditions probably are not detailed.

There are a considerable number of reports which indicate that many of the Vietnamese youths working in the USSR and Eastern Europe have volunteered, though perhaps without full information, for that service. They hope for an improvement over the poverty and unemployment in Vietnam, although some express bitterness upon experiencing the reality of labor in the USSR. There are charges that dissidents from "re-education" camps are being forced into the program. However, other reports indicate that the Vietnamese authorities exclude such individuals as well as others who were associated with the US or with the former Republic of Vietnam.

Complaints have been reported from some Vietnamese workers in the USSR about the cold, hard work, surveillance, and the less-than-expected availability of goods. In addition, the workers live a largely segregated existence as do other foreign laborers. In addition to factory work, the Vietnamese are involved in construction projects in southern Siberia. It has been charged that they are working on the export gas pipeline, but this has not been substantiated.

New "Labor Cooperation" program

Since 1981, the Vietnamese government has been engaged in a new program of exporting labor under intergovernmental agreements. Although the program probably began earlier on an experimental basis, the first agreement was signed with the USSR on April 2, 1981, followed by a protocol in November presumably covering 1982. It was recently reported that another agreement is now under negotiation. Czechoslovakia first signed an accord with Vietnam in September 1981—although Prague probably also had received contingents—followed by Bulgaria in November and by East Germany in January 1982. Additional protocols were signed with the Czechoslovak Government in early November 1982 and with Bulgaria in January, 1983.

The Vietnamese regime apparently hopes to receive some training for its many unemployed youths, as well as to use some of their earnings to repay its debts to other communist countries. The number of workers has not been published officially. Estimates of the number of workers to be sent to the USSR and Eastern Europe through 1985 range from 100,000 (Vietnamese Embassy spokesman in Bangkok, 11/81 and pro-Hanoi publication in Paris 12/81) to 500,000 (East European source cited in London Economist 9/81). According to Soviet and Vietnamese media, the number already in the USSR has grown from 7,500 last spring to over 11,000 in October.[1]

Although the text of the April 1981 Soviet-Vietnamese accord on "labor cooperation" remains unpublished, descriptions of it by official Soviet and Vietnamese spokesmen a year later suggest that it covers wages and social benefits (allegedly comparable to those of their Soviet counterparts), living conditions, social benefits, vacations and length of service. A subsequent, published treaty signed in December 1981 defined the legal rights of Vietnamese in the USSR as well as those of Soviet citizens in Vietnam. It went into effect in September 1982. Each foreign resident is entitled to the same legal safeguards as the citizen of the country of employment, and the country in which a crime is committed has the sole right to try the offender.

Selection of workers

Participants in the program are recruited by the Vietnamese Ministry of Labor, and their backgrounds are checked by the Ministry of Interior. They must be relatively young (age ranges of both 17-35 and 17-30 have been given). The term of participation can be as long as seven years, an extraordinarily long period for a labor contract. There have been charges that "reeducation" camp inmates or parolees are among the participants in the program, but other re-

[1] The number of Vietnamese in Eastern Europe, according to Communist press reports, include 7,500 in East Germany last spring and 20,000 in Czechoslovakia in December. No figures have been published for Bulgaria. There may be serious assimilation problems. For example, popular discrimination against the Vietnamese and instances of open hostility have cropped up in Czechoslovakia, according to official Prague press reports.

(12)

ports say that those with personal backgrounds unacceptable to the authorities are specifically excluded. Recruits, if eligible, also reportedly must have fulfilled their military obligation.

Once recruited, and having completed an orientation course in Hanoi, the candidates sign contracts which lay out their duties, rights and wages, including the fact that a considerable portion of their wages will be retained by the state. They are not allowed to choose their destination, but most reportedly hope for Czechoslovakia or East Germany, rather than Bulgaria or the U.S.S.R.

Reports that pressure has been applied in recruitment are countered by evidence that there is little difficulty in securing volunteers who perceive a chance to leave the poverty of Vietnam. Over two dozen refugees, who recently departed Vietnam legally, reported that places in the "work-study" program were sought by youths who believe they will be able to remit substantial goods and funds back to Vietnam. Similar opinions were offered by Southern boat refugees recently interviewed. When concern about the program is voiced, it is usually by skeptical Southerners—acquainted with "reeducation" camps—who fear a repetition under more frigid conditions.

Deductions to credit Vietnam's accounts

There is little doubt that, after a deduction for living expenses and a monthly allowance, at least one-third of the salary is credited against Vietnam's account in the U.S.S.R. or the East European country involved. Although the monthly allowance is low, there are reports that incentive bonuses are paid directly to the workers. In short, although communist spokesmen claim that the Vietnamese receive wages comparable to their Soviet counterparts, the actual salary after deductions probably is less, lending credence to complaints from some Vietnamese working there.

Both Moscow and Hanoi have labeled as "slander" reports that Vietnamese workers are laboring to pay off Vietnam's large scale indebtedness to the USSR. However, they have not directly denied it or denied that the labor is being credited against Vietnamese imports of Soviet goods which, in 1981 alone, ran almost 600 million rubles over Vietnam's exports to the USSR. Both sides claim that Vietnam's war debt was forgiven by Moscow in 1978, and Vietnamese Foreign Minister Thach said that further debts were forgiven in 1978. Nonetheless, although figures are not available, much of the Soviet aid since the war has been in the form of loans and credits, not grants.

Crediting labor against present or future imports has been standard practice in the case of East European and Finnish "guest workers" in the USSR, and the Yugoslav newspaper *Borba* (June 10, 1982) suggested that this was the arrangement for the Vietnamese as well. Furthermore, sources in Hanoi reportedly acknowledged (*Far Eastern Economic Review*, May 14, 1982) that an unspecified amount is withheld from the Vietnamese workers. Other reports estimate that between 30 and 70 percent of wages is withheld.

Living conditions

Most workers contract to work for five to six years after a period of language and technical training, depending on the job involved. A mid-way "home leave" in Vietnam, partially at Soviet expense, is said to be part of the arrangement. The April 1981 accord apparently provided that the Soviets arrange suitable housing, eating and social facilities. As implied in communist propaganda and reported back in letters from Vietnamese workers in the USSR, the Vietnamese generally live apart in dormitories or compounds and lead a segregated life, as do other foreign workers there (and as do Soviets in Vietnam). Although the official Soviet trade unions and youth organizations are said to be involved with the workers, it seems likely that the primary off-the-job supervision comes from the Vietnamese cadre who accompany the contingents.

Most groups appear to be sent to European Russia or to the Southern tier of Siberia which, to a Vietnamese, still would seem exceedingly cold in the winter. Adjustment to winter conditions appears to be a problem. The Soviets issue winter clothing which, according to some workers, is inadequate.

Letters complaining about the cold, working conditions, low allowances and surveillance by Vietnamese overseers reportedly have reached Vietnam as well as the West. There are a number of refugee reports that letters have been received by families in Vietnam, a fact which suggests that correspondence itself is permitted. However, it may be subjected to censorship by Vietnamese cadres in charge at the work sites. To avoid this, some Vietnamese purportedly have found ways to smuggle letters out.

Types of work

The April 1981 accord presumably also covered types of employment and training, as well as how wages were to be allocated and perhaps even the location of work. The Communist press claims that the Vietnamese are working in a variety of jobs which require some skill. This may reflect Vietnam's concern that some workers gain experience that will be useful later at home. However, we do not know the extent of training received. A considerable number clearly are engaged in manual labor.

Among the work sites mentioned by Soviet and Vietnamese media are textile and chemical factories, machine-tool factories, coal mines, land reclamation and transportation projects. The latter two undoubtedly absorb large amounts of manual labor. A letter from one worker, which appears authentic, tells of his "hard work" on the new railroad paralleling the Trans-Siberian line. In addition, a contingent of Vietnamese was observed working near a railroad in the Soviet Far East and subsequently another was seen in Khabarovsk by Western travelers—an area which has not been mentioned in communist media.

The Soviets, speaking through Soviet labor official Vladimir Lomonosov who negotiated the original agreement with Vietnam, have flatly denied that any Vietnamese are working on the Siberia-Western Europe pipeline. In Congressional testimony last summer, Vietnamese expatriate Doan Van Toai (a former supporter of the communist-led National Liberation Front) said he knew of nine Vietnamese working on the pipeline; he supplied names and their Vietnamese addresses. The U.S. government has no independent evidence to confirm that Vietnamese are working on the export pipeline.

The evidence we have regarding the Vietnamese-Soviet labor program is still incomplete; it is made difficult to gather by the closed nature of the Vietnamese and Soviet societies. Allegations of human rights violations in connection with the program, including the possibility that some of the workers may be indentured in some manner, are of concern to the U.S. Government. The program's secrecy and its inherent potential for abuse is obvious, especially when considered against the environment and history of known Soviet labor practices. The U.S. Government will continue to do its best to monitor the program, with close attention to the human rights issues involved, and to encourage greater international interest in this issue.

(3)

Central Intelligence Agency

Washington, D.C. 20505

DIRECTORATE OF INTELLIGENCE

27 September 1983

U.S. Imports of Soviet Prison-Produced Goods

1. Attached is a list of Soviet industries which, in part, utilize forced labor and produce goods for export. We cannot determine the contribution forced labor makes to either the total output or exports in each industry, nor can we provide a list of brand names or products.

2. We know that, in 1982, about 80 percent of U.S. imports from the USSR were accounted for by metals, chemical and chemical products (mainly ammonia), fertilizers, furs and fur raw materials, and alcoholic beverages. The biggest single item was ammonia--39 percent--which was imported as part of the Occidental-USSR Fertilizer Exchange Agreement, under which the U.S. exports super-phosphoric acid to the USSR.

3. Some of the items we import are probably produced by corrective labor. A Reader's Digest article, for example, gives evidence of Western purchases of prison-made furniture. But the amount of U.S. imports of Soviet goods produced by forced labor cannot be large. Last year U.S. imports from the Soviet Union totalled $229 million (less than .1 of one percent of total U.S. imports). Corrective labor comprises about three percent of the total Soviet labor force and accounts for only a small proportion of total Soviet production of the listed items; and, presumably, a correspondingly small share of exports. We can assume, therefore, that only a very small proportion of U.S. imports from the USSR consists of prison-produced goods.

Attachment:
as stated

This memorandum was prepared by Ann Goodman of the Soviet Economy Division, Office of Soviet Analysis. Questions and comments are welcome and may be addressed to the Chief, Soviet Economy Division on 281-8511.

ENCLOSURE 1

Based on a variety of intelligence sources and open publications with information from former prisoners, CIA has compiled the following list of industries and products in which forced labor is used extensively.

I. Wood Products

- lumber
- furniture
- casings for clocks
- cabinets for radio and TV sets
- wooden chess pieces
- wooden souvenirs
- wooden crates for fruit and vegetables
- cardboard containers

II. Electronic

- cathode ray tube components
- resistors

III. Glass

- camera lenses
- glassware
- chandeliers

IV. Automotive

- auto parts
- wheel rims
- parts for agricultural machinery

V. Mining/Ore Processing

- gold
- iron
- aluminum
- coal and peat
- uranium
- asbestos
- limestone
- construction stone and gravel

VI. Clothing

- coat, gloves, boots
- buttons and zippers

VII. Petroleum Products and Chemicals

VIII. Food

- Tea

IX. Miscellaneous

- brick and tile
- watch parts
- wire fences, mattresses, screens
- steel drums and barrels
- lids for glass jars
- plumbing equipment
- storage battery cases
- concrete products
- electric plugs/cords
- electric heaters
- electric motors
- pumps
- woven bags

WASHINGTON, D.C. 20510

October 25, 1983

The Honorable Donald T. Regan
Secretary of the Treasury
Department of the Treasury
Washington, D.C. 20220

Dear Mr. Secretary:

It has come to our attention that the U.S. law (19 U.S.C. 1307) which prohibits the importation into the United States of "all goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor and/or forced labor" is not being enforced with regard to imports from the Soviet Union.

There is ample evidence from both official and unofficial sources to indicate that many of the products being imported from the Soviet Union into the United States are being produced, at least in part, by forced labor. The State Department, in its REPORT TO CONGRESS ON FORCED LABOR IN THE USSR (February, 1983) stated that forced labor is used "to produce large amounts of primary and manufactured goods for both domestic and Western export markets." The CIA has compiled a list of products and industries in the USSR in which forced labor is used "extensively." These include wood products such as lumber, furniture, wooden souvenirs and toys; cathode ray tube components and resistors; camera lenses, glassware and chandeliers; auto and agricultural machinery parts; and mined products, in particular gold, iron, coal, uranium, asbestos and limestone.

We believe the United States has a moral as well as a legal obligation to enforce this law with regard to products produced in the Soviet Union. This would be true at any time, but the need for enforcement is especially urgent now, in the wake of the Korean Air Lines Massacre and mounting evidence of increased repression by the Soviet authorities of domestic human rights activists.

We understand that the Commissioner of Customs, the Honorable William Von Raab, has drawn up a proposed regulation to enforce 19 U.S.C. 1307 as it applies to some three dozen imports from the Soviet Union, and that that proposed regulation is now being reviewed by a Senior Interagency Group (SIG).

We want to express to you our strong belief that the review process should be completed expeditiously, that the regulation should be published in the Federal Register, and that the anti-forced-labor law should be enforced.

Sincerely,

Daniel Moynihan

Bill Armstrong

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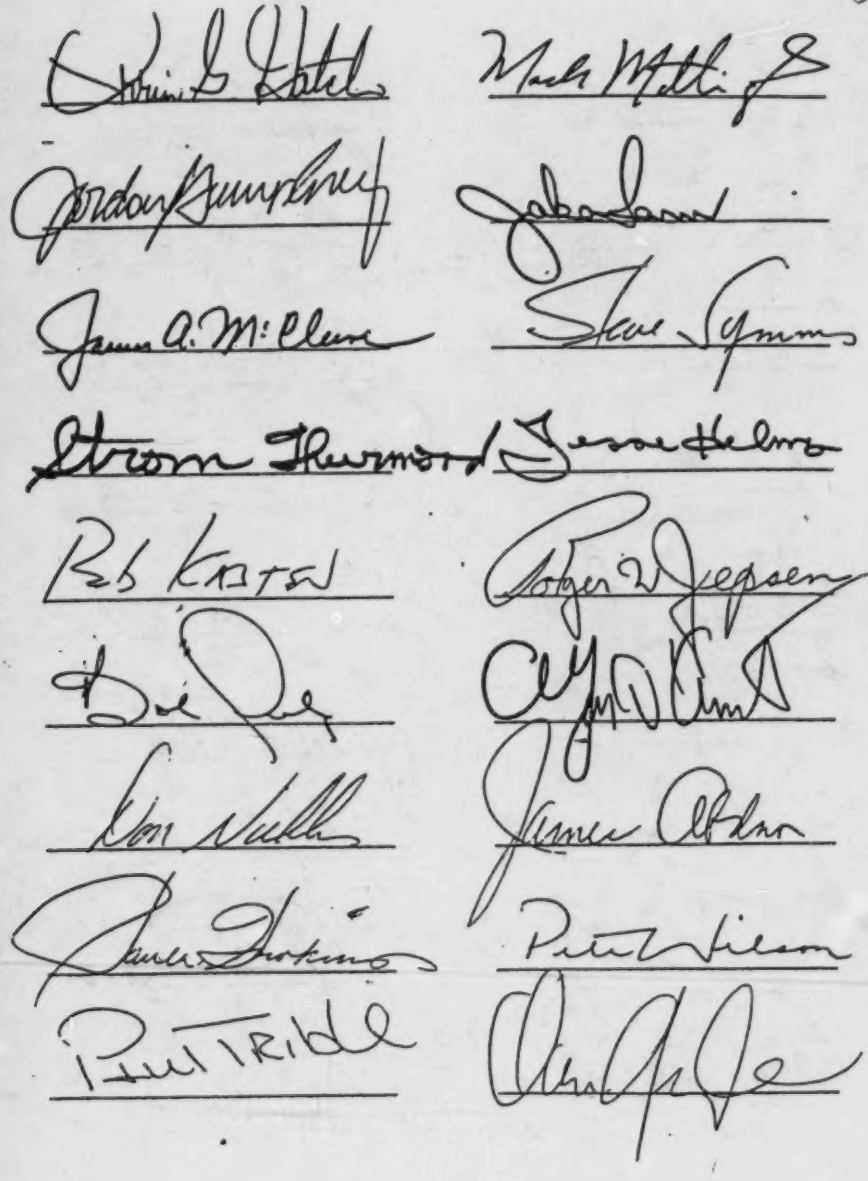

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Howell Hollis	Chic Hecht
Jim Santini	Dale Bumpers
Lawton Chiles	Dennis DeConcini

98TH CONGRESS
1ST SESSION

H. CON. RES. 100

Calling upon the Union of Soviet Socialist Republics to end the current repressive policies of forced labor and expressing the sense of the Congress that the exploitation of workers in forced-labor camps by the Union of Soviet Socialist Republics is morally reprehensible.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1983

Mr. SMITH of New Jersey submitted the following concurrent resolution; which was referred to the Committee on Foreign Affairs

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CONCURRENT RESOLUTION

Calling upon the Union of Soviet Socialist Republics to end the current repressive policies of forced labor and expressing the sense of the Congress that the exploitation of workers in forced-labor camps by the Union of Soviet Socialist Republics is morally reprehensible.

Whereas international law in this century has recognized that everyone has the right to liberty and security of person, and has repeatedly condemned the use of forced or compulsory labor;

Whereas on February 9, 1983, the United States Department of State documented that the Government of the Union of Soviet Socialist Republics operates the largest forced-labor system in the world, comprising some one thousand one hundred forced-labor camps, and that this system "gravely

infringes internationally recognized fundamental human rights";

Whereas the United States Department of State has estimated that the Soviet system "includes an estimated four million forced laborers, of whom at least ten thousand are considered to be political and religious prisoners";

Whereas the International Commission on Human Rights, following a hearing in Bonn on November 18 and 19, 1983, concluded that the Union of Soviet Socialist Republics "continues the deplorable practice of forced labor in manufacturing and construction projects" and that prisoners, "among them women and children, are forced to work under conditions of extreme hardship including malnutrition, inadequate shelter and clothing, and severe discipline";

Whereas for nearly thirty years the International Labor Organization has investigated allegations concerning forced labor in the Union of Soviet Socialist Republics, and that the Soviet authorities have refused to provide responses satisfactory to the International Labor Organization or to open their entire forced-labor system to impartial international investigation;

Whereas through these repressive policies the Union of Soviet Socialist Republics has failed to fulfill its solemn undertakings as a signatory of the Helsinki Accords, the United Nations Charter, the Universal Declaration of Human Rights, the Anti-Slavery Convention of 1926, as well as the Soviet Constitution; and

Whereas the continued violations of human rights by the Union of Soviet Socialist Republics, and in particular the use of forced labor, are factors that contribute to world tension and

create concern about the validity of the international commitments of the Soviet Union: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the policies of forced labor are morally reprehensible, and that the President, at every opportunity and in the strongest terms, should express to the Government of the Union of Soviet Socialist Republics the opposition of the United States to these reprehensible policies, and that they cease these practices and honor the international commitments agreed upon.

Congress of the United States

House of Representatives

Washington, D.C. 20515

May 23, 1984

The Honorable William von Raab
Commissioner, U.S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Commissioner von Raab:

Pursuant to 19 U.S.C. §1307 and 19 C.F.R. §12.42(b), the undersigned Members of Congress and other interested parties, through their attorneys the Washington Legal Foundation, hereby petition the U.S. Customs Service, all district directors, and you as Commissioner of Customs, to enforce 19 U.S.C. §1307 and the regulations promulgated thereunder by detaining and otherwise preventing from entry at any of the ports of the United States all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Soviet Union by convict labor and/or forced labor and/or indentured labor under penal sanctions. This action is also requested by the Constitutional Institute of America which is a project of the Washington Legal Foundation and the Union Mutual Foundation.

The undersigned have found it necessary to request this action formally since all prior informal requests by Members of Congress and others have not resulted in any action by the Customs Service to detain or prevent the importation of such slave made goods. We also note that as a historical matter, a complaint similar to this one was filed in 1950 by six Congressmen invoking 19 U.S.C. §1307 with respect to the importation of crabmeat from the Soviet Union based on the allegation that the crabmeat was being canned by Japanese prisoners of war. The Customs Service acted on such complaint and prohibited the importation of such crabmeat from the Soviet Union from 1950-1961. The information provided by the Congressmen in 1950 was based primarily on summary information provided by the Central Intelligence Agency.

The Soviet goods, wares, articles, and merchandise that are the subject of this petition and made with convict or slave labor include the following goods and categories:

I. Wood Products: Lumber furniture, casings for clocks, cabinets for radio and TV sets, wooden chess pieces, wooden souvenirs, wooden crates for fruit and vegetables, and cardboard containers.

II. Electronic: Cathode ray tube components, and resistors.

III. Glass: camera lenses, glassware, and chandeliers.

IV. Automotive: Auto parts, wheel rims and parts for machinery.
V. Mining/Ore Processing: Gold, iron, aluminum, coal and peat, uranium, asbestos, limestone, and construction stone and gravel.
VI. Clothing: Coat, gloves, boots, and buttons and zippers.
VII. Petroleum Products and Chemicals.
VIII. Food: Tea
IX: Miscellaneous: Brick and tile, watch parts, wire fences, mattresses, screens; steel drums and barrels, lids for glass jars, plumbing equipment, storage battery cases, concrete products, electric plugs, cords, electric heaters, electric motors, pumps, and woven bags.

There is ample evidence from both official and unofficial sources to indicate that these goods are not importable under 19 U.S.C. §1307, including evidence provided by the State Department and Central Intelligence Agency. In addition, there are domestic producers in the United States of these goods who can meet the consumptive demands of the United States with respect to those goods and thus, these Soviet slave made goods are not exempted under the exception clause of 19 U.S.C. §1307. The name and addresses of domestic producers likely to be interested in this matter are attached in the accompanying memorandum as required by 19 C.F.R. §12.42(b)(4), as well as other additional information required by 19 C.F.R. §12.42.

While we are aware of your efforts to issue a finding that some or all of the merchandise listed above is subject to §1307, such a finding under 19 C.F.R. §12.42(f) requires the approval of the Secretary of the Treasury which has heretofore been withheld. Accordingly, we also formally request that you exercise your duty under §12.42(e) that does not require the approval of the Secretary, namely, to "promptly advise all district directors" that the information provided here and that is otherwise in your possession "reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported...." The district directors shall then have the non-discretionary duty to detain such goods and "withhold release of any such merchandise pending instructions" from you as to the further disposition of such goods. In other words, if you have already made an affirmative finding under §12.42(f) that is awaiting Secretary Regan's approval, you have necessarily made the "reasonable" finding under §12.42(e) and your duty is to so inform the district directors. In addition, such authorized unilateral action by you will be beneficial since it will serve to stem the importation of slave made goods into our commerce pending the Secretary's approval of the final finding, at which point those goods may then be shipped back to the Soviet Union or otherwise disposed of. If certain goods enumerated in our petition turn out not to be the subject of the final finding, then those goods may be released to their ultimate consignee. By invoking your unilateral authority and carrying out your duty, the Soviet Union will

not be allowed to violate our laws by taking advantage of bureaucratic delays in the enforcement of 19 U.S.C. §1307. This provision, 19 C.F.R. §12.42(e), is designed to accomplish that worthy objective.

We believe the United States has a moral as well as legal obligation to enforce this law with respect to slave made goods from the Soviet Union. As a nation committed to human rights, it is incumbent that we enforce this law against the Soviet Union which consistently violates basic human rights and forces millions of its citizens to work in Gulags and other prison camps under atrocious conditions. Our country should not and cannot be a party to such human rights violations by importing slave made goods.

Please respond to this request to each of the undersigned as well as to The Washington Legal Foundation.

Sincerely,

Hon. Stewart McKinney, M.C.

Hon. Jim Scheuer, M.C.

Hon. Ed Jones, M.C.

Hon. Larry Craig, M.C.

Hon. James H. Quillen, M.C.

Hon. Vin Weber, M.C.

Hon. Bob Stump, M.C.

Hon. Chris Smith, M.C.

Hon. Jerry Solomon, M.C.

Hon. Duncan Hunter, M.C.

Hon. Hank Brown, M.C.

Hon. Barbara Vucanovich, M.C.

Hon. Hal Rogers, M.C.

Hon. Norman D. Shumway, M.C.

(26)

Hon. Toby Roth, M.C.

Hon. Mark D. Siljander, M.C.

Hon. Ben Erdreich, M.C.

Hon. Newt Gingrich, M.C.

Hon. Andy Ireland, M.C.

Hon. Connie Mack, M.C.

Hon. Bobbi Fiedler, M.C.

Hon. Olympia Snowe, M.C.

Hon. Bob Walker, M.C.

Hon. Jim Courter, M.C.

Hon. Judd Gregg, M.C.

Hon. Chalmers Wylie, M.C.

Hon. Sherwood Boehlert, M.C.

Hon. Buddy Roemer, M.C.

Hon. Paul Vandergriff, M.C.

Hon. Phil Crane, M.C.

Hon. Frank R. Wolf, M.C.

Hon. Bill Dannemeyer, M.C.

Hon. Henry J. Hyde, M.C.

Hon. Tom Lantos, M.C.

Hon. Antonio Won Pat, M.C.

Hon. Tom Kindness, M.C.

(27)

Hon. Bill McCollum, M.C.

Hon. Larry Smith, M.C.

Hon. Tom Bliley, M.C.

Hon. Andrew Jacobs, M.C.

Hon. Ed Markey, M.C.

Hon. Tom Foglietta, M.C.

Hon. Mike Synar, M.C.

Hon. Dante B. Fascell, M.C.

Hon. Hamilton Fish, Jr. M.C.

Hon. Joseph Addabbo, M.C.

Hon. Bill Hughes, M.C.

Hon. John R. Kasich

Hon. Lynn Martin, M.C.

HOn. Bruce A. Morrison, M.C.

Hon. Bob Livingston, M.C.

Hon. Mary Rose Oakar, M.C.

Hon. Jack Kemp, M.C.

Hon. Baltasar Corrada, M.C.

Hon. John E. Porter, M.C.

Hon. Peter H. Kostmayer, M.C.

Hon. Daniel E. Lungren, M.C.

Hon. Michael Bilirakis, M.C.

Hon. Donald J. Pease, M.C.

Hon. Tony P. Hall, M.C.

Hon. Tom Corcoran, M.C.

Hon. Steny H. Hoyer, M.C.

Hon. William O. Lipinski, M.C.

Hon. Robert E. Badham, M.C.

Hon. Bill Archer, M.C.

Hon. Herbert Bateman, M.C.

Hon. Bob Lagomarsino, M.C.

Hon. Dan Burton, M.C.

Hon. Robert Roe, M.C.

Hon. Larry Winn, Jr. M.C.

Hon. David Dreier, M.C.

Hon. Hal Daub, M.C.

Hon. Eldon Rudd, M.C.

Hon. Dan Crane, M.C.

Hon. Bill Clinger, M.C.

Hon. Dan Coats, M.C.

Hon. Claudine Schneider, M.C.

Hon. Don Ritter, M.C.

Hon. Gus Yatron, M.C.

Hon. Charles Pashayan, Jr. M.C.

Hon. Ed Bethune, M.C.

Hon. Michael DeWine, M.C.

Hon. Mickey Edwards, M.C.

Hon. Lawrence Coughlin, M.C.

SEP 2 8 1983

EXECUTIVE SECRETARY
THROUGH: Assistant Secretary (Enforcement and Operations)

Commissioner of Customs (Signed) William von Raab

Withholding of Release of Merchandise from Soviet Union Which May be Produced by Convict, Forced, or Indentured Labor

Submitted for your approval is a document prepared for publication in the Federal Register which advises that in accordance with section 307, Tariff Act of 1930 (19 U.S.C. 1307) and section 12.42, Customs Regulations (19 CFR 12.42), I have determined on the basis of information reasonably available that certain articles from the Soviet Union may be now, or are likely to be, imported into the United States, which are being produced whether by mining, manufacture, or other means, with the use of convict, forced, or indentured labor. While we realize that section 12.42 does not necessarily require publication of this type of notice, we believe the importing public deserves notice of actions of this magnitude. In addition, publication removes any possible legal objections based upon lack of notice.

We propose that, effective 5 days from the date of publication of the notice in the Federal Register, the release for consumption or withdrawal from warehouse for consumption of the specified articles, be withheld. Customs officers will be instructed to withhold release of any such articles pending instructions as to whether they may be released otherwise than for exportation.

As you are aware, in February of this year, the Department of State, in a letter of transmittal accompanying its Report To The Congress On Forced Labor In The USSR, declared that forced labor is used "to produce large amounts of primary and manufactured goods for both domestic and Western export markets." Senator William L. Armstrong of Colorado has inquired as to what Customs is doing to prevent such articles from being imported into the United States. Further, the lack of enforcement of 19 U.S.C. 1307 is raised in an article on forced labor in the Soviet Union published in the Reader's Digest in September 1983. I believe

Simpson Schaffer De Angelus Abbey Newcomb Bates

that many other members of Congress and the American public are also concerned with this matter and would support this effort on our part to ensure that such articles are not imported. Accordingly, it is recommended that you approve the document as soon as possible.

Approved_____

Disapproved_____

HMAmernick:sl:9/28/83

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

19 CFR Part 12

(T.D. 83-)

WITHHOLDING OF RELEASE OF MERCHANDISE FROM SOVIET UNION WHICH MAY BE PRODUCED BY CONVICT, FORCED, OR INDENTURED LABOR

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Withholding of Release of Merchandise.

SUMMARY: This document advises that based on available information, the Commissioner of Customs has made a finding which indicates that certain articles imported in the United States from the Soviet Union may be produced, whether by mining, manufacture, or other means, with the use of convict labor, forced labor, or indentured labor under penal sanctions. Because such merchandise is being, or is likely to be, imported into the United States in violation of the Tariff Act of 1930 and the Customs Regulations, the release from Customs custody for importation of any of the specified articles is being withheld pending a final determination on this issue.

DATE: This withholding shall take effect on (5 days after date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT:

John P. Simpson, Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202) 566-2507.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 307, Tariff Act of 1930 (19 U.S.C. 1307), provides, in part, that "all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision."

"Forced labor", as used in 19 U.S.C. 1307, is defined to "mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily."

Based upon 19 U.S.C. 1307, section 12.42, Customs Regulations (19 CFR 12.42), sets forth a procedure for the Commissioner of Customs to make a finding that an article is being, or is likely to be, imported into the United States which is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of 19 U.S.C. 1307.

Paragraph (e) of section 12.42, Customs Regulations, provides that if the Commissioner of Customs finds at any time that information available, reasonably but not

conclusively, indicates that merchandise within the purview of 19 U.S.C. 1307 is being, or likely to be, imported, he will promptly advise all district directors of Customs accordingly and the district directors shall withhold release of the merchandise from Customs custody pending instructions as to whether the merchandise may be released otherwise than for exportation.

FINDING

Pursuant to section 12.42(e), Customs Regulations, information available reasonably, but not conclusively, indicates that certain articles of the Soviet Union are being, or are likely to be imported into the United States, which are being produced, whether by mining, manufacture, or other means, with the use of convict, forced, or indentured labor. Accordingly, on and after (5 days after the date of publication in the Federal Register) the release from Customs' custody for consumption or withdrawal from warehouse for consumption of the following articles from the Soviet Union shall be withheld:

Articles	Item Number from Tariff Schedules (19 U.S.C. 1202)
Lumber	202.02-202.66
Furniture	727.11-727.55
Clock Cases (Wood)	720.34
Radio-TV Cabinets	685.18, 685.29, 685.36
Chess Pieces (Wood)	734.15
Wooden Souvenirs	207.00
Wooden Crates	204.10-204.30
Cardboard Boxes	256.48-256.54
Cathode Ray Tubes and Components	687.35-687.54

Resistors	686.10
Camera Lenses	708.03,708.23
Glassware including Chandeliers	Schedule 5, Part 3, Subpart C- Item 545.11- 548.05
Auto Parts	692.32) Note-Because of
Wheel Rims	692.32)) General Headnote 10
Agricultural Parts	666.00) (i-j) parts are) entered through-) out the TSUS, mainly in)Schedule 6
Gold Ores	601.39
Iron Ore and Maganese Ore	601.24, 601.27
Bauxite	601.06
Uranium Ore	601.57
Coal Lignite	521.31
Asbestos	518.11
Limestone Crushed	513.35-513.26
Construction Stone	513.61-515.54
Gravel	513.14
Men's-Boy's Ornamented Coats-Cotton	379.02, 379.06, 379.08
" " " " -Wool	379.13, 379.17
" " " " -Man Made fibers	379.23, 379, 31, 379.33
" " " " -Other	379.35
" " Not Ornamented -Cotton	379.39, 379.43-379.46
" " " " -Vegetable fibers except cotton	379.66, 379.69
" " " " -Wool	379.71, 379.75, 379.78, 379.81, 379.83
" " " " -Silk	379.86, 379.87

• • • • -Man-made fibers	379.89, 379.94, 379.95
Women's-Girl's Ornamented Coats	
• • • • -Cotton	383.02, 383.05
• • • • -Wool	383.12, 383.15
• • • • -Man-made fibers	383.19, 383.22
• • • • -Other	383.25
Not Ornamented Coats	
• • • • -Cotton	383.28, 383.32-383.34
• • • • -Vegetable fibers except cotton	383.52, 383.53
• • • • -Wool	383.57, 383.62, 383.65, 383.68, 383.72
• • • • -Silk	383.77, 383.78
• • • • -Man-made fibers	383.81, 383.88, 383.90
Gloves	704.05-705.90

Boots	Schedule 7, Part 1, Subpart A - Item 700.10-700.71
Buttons	745.04-745.42
Zippers (Slide Fasteners)	745.70-745.74
Chemicals	Schedule 4 - Item 401-02-407.16, 415.05-432.25
Petroleum	475.05-475.70
Tea	160.50
Brick & Tile	532.11-532.61
Watch Parts	720.20-720.30, 720.60, 720.65, 720.70, 720.75, 720.90
Fencing (Metal Wire)	642.35-642.87, 642.02
Mattresses	727.82-727.86
Screening	642.35-642.87
Drums-Barrels	640.20-640.30
Lids, of steel, for glass jars	657.25
Plumbing Equipment	Various
Storage Battery Cases	683.07
Concrete Products	511.31-511.71
Electric Plugs	685.90
Electric Cords	688.04, 688.25
Electric Heaters	684.40, 684.20
Electric Motors and Parts	682.20-682.60
Pumps	660.97
Bags of Textile Materials	385.45-385.55

Based upon this finding, Customs officers shall withhold release of any of these articles from the Soviet Union pending instructions as to whether they may be released otherwise than for exportation.

This withholding shall remain in force pending a final determination as to whether the merchandise listed in this notice is subject to 19 U.S.C. 1307.

(Signed) William von Raab

Dated: Commissioner of Customs

MMAmernick:sl:9/28/83

02/12/85
21:48:03

Leading items in U.S. imports for consumption from U. S. S. R.(Soviet Union) in 1984, 1980, 1981, 1982, 1983, and 1984

(Customs value, in thousands of dollars)

TSUSA number	Description	1980	1981	1982	1983	1984
4751015	Light fuel oils a tcr 25deg	0	80,706	0	48,913	168,840
4806540	Anhydrous ammonia	94,796	78,414	88,765	85,722	139,604
6050260	Palladium, palladium	54,563	31,142	24,856	41,849	59,267
4803000	Urea, nspf	0	0	10,434	38,913	44,694
1143000	Crabs fresh chilled frozen	0	0	2,107	12,790	15,248
6050750	Palladium bars plates etc	11,658	2,815	1,685	4,343	15,154
1241045	Sable furskins, whole, raw	5,938	8,120	7,164	7,803	9,789
4750535	Heavy fuel oils un 25 deg	6,256	0	15	0	9,082
4805000	Potassium chloride or	2,407	0	4,600	4,134	8,996
6180650	Unwrought alloys of aluminum	101	0	219	137	7,211
1693800	Vodka in containers not over	1,898	5,799	7,173	9,883	7,036
4751035	Heavy fuel oils 25 deg api	0	9,467	0	0	6,029
4753000	Kerosene derived from shale	0	0	0	0	5,449
6181000	Aluminum waste & scrap	0	2,996	0	0	4,703
6050270	Rhodium, rhodium content	6,276	3,475	3,475	2,105	3,674
4017415	Ortho-xylene	0	0	0	0	3,578
6050710	Platinum bars,plts sheets nt	6,999	1,413	1,197	2,356	3,331
4011000	Benzene	0	0	0	0	2,985
4752520	Gasoline	0	0	10,341	0	2,977
6050220	Platinum sponge platinum	4,604	4,626	3,961	3,003	2,955
2401440	Plywood, birch face not face	1,123	3,209	1,374	2,283	2,622
7650300	Paintings, pastels, drawings	6,727	96	115	3,102	2,017
4257000	Acetic acid	0	0	0	0	1,842
6063542	Ferosilicon, contng 30%	0	0	0	0	1,816
1693700	Vodka in containers not over	889	1,406	2,173	1,220	1,655
2452020	Hardboard, not face finished	608	1,977	1,569	1,359	1,604
6052020	Gold bullion, refined	85,695	21,368	1,493	1,438	1,443
2451000	Hardboard, n/face-finished	1,042	29	436	731	1,427
6063546	Ferosilicon cont ovr 30%	0	0	0	2,804	1,335
4016400	Pseudocumene	0	0	0	0	1,222
	Total	291,580	257,057	175,132	274,890	536,787
	Total, all items imported from U. S. S. R.(Soviet Uni	430,387	356,961	228,602	340,486	556,122

Source: Compiled from official statistics of the U.S. Department of Commerce.

From: Int'l Practices and Agreements concerning Compulsory Labor and US Imports of Goods Manufactured by Convict, Forced, or Indentured Labor. ITC. Dec. 1984

3-3

> While it is clear that some Soviet enterprises which utilize forced labor produce goods which are ultimately exported, neither the exact magnitude of the contribution forced labor makes to the total output nor the specific items produced with such labor have been determined. Moreover, the evidence seems clear that although forced laborers produce a substantial amount, in absolute terms, of primary and manufactured products, this is only a small, if not negligible, percentage of total Soviet industrial production. An even smaller percentage is exported, and, of this, only a very small fraction reached the US. The absence of specific evidence that a particular good or article was produced using forced labor would certainly raise questions regarding any attempt to apply Section 307 broadly in regulating US-Soviet commerce.

As a result of Customs' draft notice and of the concerns raised by Government agencies, Customs was asked by the U.S. Department of the Treasury to prepare new guidelines to assist in the application of section 307, particularly as to goods from the Soviet Union. These guidelines were to assure consistency in the decision making process and to ensure that an intensive review of the facts of each case would be carried out. The new Customs guidelines were prepared and are still under consideration, and the CIA compiled a product list along with a summary of supporting evidence in each category that served as the basis for review by senior Government officials.

After this review process, the U.S. Customs Service drafted a list containing five product categories as to which the evidence of both significant forced-labor content and likely US-bound shipments were found to exist. 1/ The evidence provided by the CIA was collected from all available sources with greater weight given to information which was reported by more than one source. Much of the information provided to Customs is more than 4 years old and some of it is 10 years old or older. The problems in relating this evidence to a specific item ban under section 307 are made difficult as much of the information relates to broad product groups that encompass a large number of individual items. This list is still under review by the U.S. Department of the Treasury.

Products Prohibited Entry Under Section 307

Wooden furniture from Mexico (1953)

A shipment of wooden tables and chairs from Mexico was presented for entry during 1953 at the border in Texas. An accompanying invoice noted that the merchandise was made by convict labor, and the seller's business card represented him as an agent for the State penitentiary shops. This was apparently the only evidence for Customs' exclusionary ruling (T.D. 53408)

1/ The five product categories were tea, gold, petroleum products, agricultural machinery, and tractor generators.

other than the existence of a prior entry, in 1943, of a shipment of furniture from the same penitentiary in Ciudad Victoria, Mexico, which had been entered at the same port of entry. Because of these two incidents Customs prepared and issued a finding as to these articles to prevent sporadic attempts to introduce such convict-made goods into this country.

Furniture from Mexico (1958)

In 1958, a ruling was issued (T.D. 54725) that prohibited the entry of furniture of metal with palm fiber backs and seats, of clothes hampers, and of palm leaf bags into the United States from Mexico. When a shipment of metal furniture was entered, the seller, after questioning by the Customs officer at the port, stated that it was convict made. He also said that the prison had an open area where the public was allowed to purchase goods made by the convicts. Before issuing a ruling, the U.S. Customs Service ordered an investigation to be conducted by a Treasury representative in Mexico City.

In this case, Customs relied upon the Hendrick rule, which was formulated in 1956, to decide if the articles should be prohibited entry into the United States. Customs determined that three of the exclusionary requirements of the Hendrick rule were met, i.e. (1) the convicts worked on their own time, (2) they worked voluntarily, and (3) the State received no pecuniary benefit. However, the fourth requirement relating to wages being paid that are comparable to nonconvict labor for the same work was not met and consequently the goods were banned.

Crabmeat from the Soviet Union (1950-61)

In January 1951, on the basis of information from former prisoners of war from Japan held by the Russians, the U.S. Secretary of the Treasury approved the finding of the Commissioner of Customs that compulsory labor had been used in the Soviet Union to process and manufacture canned crabmeat 1/ and banned importation of the product.

This case was initiated following a complaint from six Congressmen, and the evidence considered by Customs consisted largely of summaries provided by the Central Intelligence Agency, supplemented by affidavits obtained from ex-prisoners in Japan. 2/ The U.S. Department of State also assisted in the investigatory process. The Department's assurances in 1961 that crabmeat was no longer canned using prison labor served as the basis for the revocation of the Customs finding prohibiting imports of Soviet crabmeat.

Gymnastic equipment from Canada (1970)

During 1970, a physical education instructor wished to purchase a gymnastic apparatus called a "Canadian Foldaway Climber" that was made in Canada by prison labor. He was aware of section 307, but since the apparatus

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1/ Federal Register, vol. 16 (1951) p. 776.
2/ "Forced Labor in the Soviet Union," Report of the Subcommittee on Human Rights and International Organizations of the House Committee on Foreign Affairs, Nov. 9, 1983, p. 79.

was not available for sale in the United States he inquired if an exception could be granted under the statute. Customs informed him that if gym equipment of a similar type was available for purchase in the United States, no exception would be granted. In addition, before an exception could be granted, other criteria must be met--specifically, satisfying the Hendrick rule. Without elaboration, Customs advised that the importation of the gym equipment would be prohibited entry into the United States under section 307.

Assorted articles from Mexico (1970)

A private citizen during 1970 wanted to import a number of goods made by convict labor in Mexico and to sell them in the United States. The sales would have provided a source of income to the inmates as well as to the importer. Customs informed him that articles of the type described would be prohibited entry under section 307.

Hammocks from Mexico (1974)

A private citizen during 1974 wanted to import nylon hammocks made by prisoners in a municipal jail in Acayucan, Mexico, to earn spending money and asked if this was possible. Customs advised him that section 307 provides for a general prohibition of the entry of convict-made goods into the United States. In some cases, certain uses of convict labor have been found to be outside the prohibition depending upon the facts of each case. Here, however, entry was barred.

Assorted goods from Mexico (1974)

A private citizen asked Customs during 1974 if it were possible to import products partially manufactured in a Mexican penitentiary. Customs responded by informing him that the statute calls for the exclusion of all goods manufactured wholly or in part by convict labor. The importer was told that exceptions have been made only after Customs has conducted an investigation but no such investigation was conducted.

Garments from Mexico (1980)

During 1980, a clothing factory in Mexico wanted to have some garments sewn by prisoners in a penitentiary. The inmates would be paid a minimum wage, and a prorated amount would be used to pay for utilities and space. In order to make its determination in this case, Customs again reviewed past convict labor cases on file to determine how the Hendrick rule had been applied. Customs referred to a 1973 memorandum, 1/ which stated that the rule had been used in all convict labor cases since 1936 to determine whether articles were within the statutory prohibition. Another memorandum written

1/ Memorandum from R. Wallis to P. McCarthy, "Review of convict labor case files," August 6, 1973.

during this investigation 1/ summarized past Customs practices. Specifically, the ". . . rule was used in cases involving articles produced in fairly small quantities which did not pose a serious threat to U.S. labor." 2/ The author of this memorandum felt that the underlying assumption to the Hendrick rule was ". . . that the convict-made goods to be imported under the rule would be handicraft items or similar items that would not significantly compete with items made in this country, even though this was not explicitly stated in the formula." 3/ However, the garments in this case could be produced in considerable volume with factory methods in the prison and would be competitive with American industry and labor. Thus, the author believed that the importation of garments produced partially in a prison operation should not be allowed entry. The ruling in the case said "[t]o allow the importation of these products would be to disregard the basic purpose of 19 U.S.C. 1307, which is to protect American labor from competition by convict labor in foreign countries." 4/

Products Allowed Entry

Handicraft articles from Mexico (1968)

During 1968, when J. C. Penney Co., Inc., was expecting a shipment of handicraft articles made by convicts in Mexico, it asked the U.S. Customs Service if the articles would be allowed entry into this country. The Office of Investigations instructed the Customs representative in Mexico to provide answers to the following questions:

(a) What is the description of the handicraft products which will be exported to the United States?
(b) Are the convicts paid at rates prevailing for similar work performed by nonconvict labor?
(c) Is there a reduction in the number of hours worked at normal institutional assignments in order to permit the convicts to devote 6-1/2 hours to produce the articles?
(d) Do convicts have access to their earnings for purchasing any products or services normally available to them?

This file contained several conflicting opinions concerning the appropriate disposition of the case, particularly questioning the legal justification and economic validity of the application of the Hendrick rule. Nonetheless Customs finally determined to allow the handicraft articles made by Mexican convicts to enter the United States based on the Hendrick rule.

1/ Memorandum from Chief, Entry, Licensing & Restricted Merchandise Branch, to Director, Office of Regulations and Rulings; "The 'Hendrick rule' and convict labor cases," Apr. 25, 1980.
2/ Id.
3/ Id.
4/ Customs ruling 712519, Oct. 20, 1980.

Tablecloths from Puerto Rico (1971)

During 1971, a shipment of tablecloths from Puerto Rico, accompanied by a certificate which in translation read "State Penitentiary--The Director," was entered at a U.S. port. The Customs officer asked Customs headquarters if the tablecloths should be found to be in violation of section 307. Customs advised him to obtain further information concerning conditions of production abroad, including where the cloths were made and under what circumstances. He was also advised to detain the shipment until the requested information was provided. A Customs representative spoke to the owner of the importing company, who claimed to have imported these prison-made tablecloths for many years but was never told that such importations were against the law. The owner then made other arrangements for the future purchase of tablecloths. Customs ruled that an investigation was not warranted since the importer stated he would not purchase such tablecloths in the future. The shipment was then allowed entry.

Booklets from Canada (1974)

During 1974, booklets entitled "Correctional Industries Association 1973-74 Directories" were detained at the border because they had been printed in a prison in Ontario, Canada. This shipment was ultimately allowed entry into the United States as Customs determined that the booklets were only for the use of the prison association; the books would not be available for sale to the general public; this shipment had been a one-time importation made without knowledge of the law; and there was an urgent need for the directories.

Coal from South Africa (1974)

This case was instituted during 1974 after the President of the United Mine Workers of America and the Attorney General of Alabama (hereinafter "the complainants") informed Customs that shipments of coal produced by indentured labor in South Africa were expected to arrive in Alabama. This coal, to be used in power plants in the United States, was said to be produced domestically in sufficient quantities to meet the consumptive demands of U.S. consumers and consequently was subject to exclusion under section 307. The importers asserted that low-sulphur coal rather than simply coal was the proper class of merchandise to be examined and that it was not produced in quantities sufficient to meet U.S. needs. In their letter to the U.S. Customs Service, the complainants supplied all the information sought under 19 CFR 12.42(b) and requested that Customs withhold release of all South African coal until a final determination under the statute had been made.

Customs conducted an investigation to determine (1) if the South African coal was produced by indentured labor under penal sanctions, including a study of the mining system under the Bantu Labour Act of 1974 and the Bantu Labour Regulations, and (2) if sufficient low-sulfur coal were being produced to meet U.S. consumers' needs. As a result of its investigation Customs determined that low-sulphur coal was a separate commodity within the general category of coal, that the supply of low-sulfur coal was insufficient to meet U.S. demand, and that such production would not be sufficient in the future. Consequently,

Customs ruled that no action would be taken under section 307 to stop importation of coal from South Africa.

Hand-made rugs from Portugal (1976)

In 1976, a shipment of rugs from Portugal was held for Customs release at a port of entry. When a U.S. citizen attempted to retrieve the shipment for her personal use, she mentioned that the rugs had been made by women prisoners. The Customs officer then informed her that the merchandise was prohibited entry into the United States under section 307. The rugs were detained pending further instructions from Customs headquarters.

The District Director advised the Port Director to release the rugs immediately. Because of this decision, an internal dispute developed among Customs officials over the policy of detention. Customs headquarters issued directives to attempt to establish uniform policies on preliminary detention of merchandise believed to have been produced by prohibited labor abroad. These directives were intended to bring allegations to the immediate attention of Customs headquarters, so that adequate initial review could be assured and goods obviously not within the scope of section 307 released.

Automotive exhaust parts from Canada (1979)

A truck driver transporting these parts from Canada during 1979 told a Customs officer at a border check that he had picked them up at a minimum security prison, and the officer detained the goods. The Customs official conducting the investigation contacted both the correctional institution and the automotive parts company. The company leased an area from the prison, as part of a prison industrial work program, where outside workers employed by the firm worked side by side with the inmates. The inmates worked voluntarily, they were paid the minimum wage, and the Government received no pecuniary benefit as a result of the inmates' work. Relying upon the Hendrick rule, Customs determined that the auto parts were not produced by prohibited labor and therefore were not to be excluded from entry under section 307.

Hand-made rugs from Portugal (1980)

A Portuguese company had exported rugs hand made by women prisoners for many years. The prison had previously been administered by a religious order, and the invoices that accompanied the rugs bore the religious order's name. Later, the prison was administered by the Government of Portugal, and the invoices now bore the title "Women's Central Prison." In 1980, the exporter informed Customs of this change because it was aware of the statute that prohibited the entry of goods made by convicts, and it wanted to avoid problems at U.S. ports of entry.

The letter provided almost all of the information required under 19 CFR section 12.42(b). Customs asked for additional information concerning the production process and an estimate of the quantity of goods expected to be exported to the United States annually. The investigation disclosed that the

inmates worked voluntarily and on their own time, and they were paid a minimum wage. Customs stated that in other instances in which the Hendrick rule conditions had been met, they had allowed the importation of small quantities of goods produced by convicts. Based on the facts of this case and on the Hendrick rule, Customs ruled that the rugs were not prohibited entry under section 307.

Toy trucks from Bolivia (1980)

In 1980, a shipment of six toy trucks, valued at less than $100, arrived in the United States from Bolivia bearing an invoice stating that the trucks were made in a public prison. The Customs officer forwarded that information to headquarters, which decided not to institute an investigation because no pertinent facts were supplied as to the production process. As there was no evidence that further shipments were expected, the trucks were allowed to enter.

Furniture from Mexico (1971)

The Customs investigator in this case saw wrought iron furniture from the prison being loaded onto a truck during 1971 that was then transported to a manufacturing firm in Mexico. The investigator visited this firm and discovered that it contained no facilities capable of producing furniture. The firm agreed to die-stamp the furniture already in inventory to indicate its origin and also to remove the tools and manufacturing equipment from the prison to their own factory. The case was closed because the U.S. importer agreed to cease importations from the foreign firm.

Vitreous enamelware from Spain (1973)

At a Chicago housewares show in 1973, an importer stated that five Spanish firms that were exporting enamelware had used political prisoners to build and run their factories. There was some doubt on Customs' part whether to institute an investigation. Initially, the Office of Investigations decided to await further reports from the port of entry involved as well as the resolution of other pending section 307 cases before instituting an investigation. Later, according to instructions in the file, an investigation was to be conducted to determine if the products were made with convict labor, seeking as much information as possible from prison authorities and other Spanish Government officials. Although the evidence presented was deemed sufficient to justify an investigation abroad, these products were not detained at the port of entry, since the evidence was found not sufficiently credible to warrant the immediate interference with current imports. Almost 7 months after the initial complaint was lodged, an investigation still had not been conducted. In fact, the investigation was never conducted. A later memorandum in the file stated that further information from the source of the complaint was needed: a full statement of the informant's beliefs, a detailed description of the merchandise and any facts known about the use of prisoners in the production of the articles. Apparently, no further information was developed, and the file was closed approximately one year after the original complaint had been made.

Hand-woven rugs from Pakistan (1973)

This case was closed because no further shipments of the rugs were imported into the United States from Pakistan after the one in question in 1973. The U.S. Customs Service was persuaded that the transaction under review was an isolated incident. Investigations were conducted abroad twice in this case, because of questions as to the conduct of the first investigation. The information revealed that (a) the prisoners worked voluntarily, (b) they were paid for their work, but the pay was below the prevailing wage that nonprisoners received for the same work, (c) the wages earned were all credited to the prisoners, and (d) the State received no pecuniary benefit from the prisoners' labor. Factor (b) could have justified banning the rugs as the imports did not fully meet the Hendrick criteria for exemption from the provisions of section 307.

Miniature toy tanks from Austria (1974)

The foreign investigation in this case (initiated in 1974 based on a report by a U.S. purchaser to a Customs official) disclosed that 90 percent of the tank production was by local Austrian residents and the other 10 percent by convicts. Although the packaging for tanks made by both groups was identical, the tanks were supposedly being segregated in storage according to the type of labor used; only tanks made by nonconvict labor were to be shipped to the United States. Due to an error, however, some tanks made by convicts were exported to this country. Following a visit to the prison by a Customs representative, a different type of packaging was developed for the convict-made tanks to prevent a recurrence of the error. Customs felt that further violations of section 307 would not occur and closed the case.

Miniature ships and swords from Spain (1974)

The importer, when questioned by a Customs official in 1974 about the value of imported ships and swords from Spain, stated that they were made by convict labor. The file contained no information other than a note which said "closed by telephone."

Stuffed toys from Japan (1975)

During the foreign investigation in the case, a Customs representative questioned Government officials in Japan and the toy company involved which stated that the toys made by the convicts were not being exported to the United States. The Government of Japan recommended that the case be closed since the evidence did not prove a violation of section 307. The Customs representative (T. Yasueda) stated for the file that "it was deemed diplomatically prudent not to pursue the matter with the Government of Japan."

Toys from Japan (1977)

An American prisoner at the Fuchu prison complained to the U.S. Embassy's consular section during 1977 that convicts at the prison were manufacturing toys which were then exported to outside markets, including the United

States. A Customs representative spoke to the vice president of the toy manufacturing company and to representatives of the trading companies which bought the toys. The representative determined that the toy manufacturing company, which did have a contract with the Ministry of Justice, was not diligently segregating the toys that were made by convicts from the toys made by nonconvict labor. The file noted that the U.S. State Department had been informed of these allegations and that direct communication with the Ministry of Foreign Affairs was being considered. However, a note in the file stated without supporting reasons, that no action was deemed necessary. No explanation was provided as to why more information was not sought.

Wire mesh screens from Taiwan (1982)

Three investigations were conducted recently that were either exclusively or in part concerned with the use of prison labor on fireplace mesh panels imported from Taiwan. The investigations are noteworthy, as they highlight several of the problems and areas of uncertainty that may be encountered in efforts to apply U.S. law to convict labor situations.

In 1982, U.S. the Customs Service conducted an investigation, based on allegations made by U.S. producers, to determine if Taiwan fireplace mesh screens exported to the United States were being made with prison labor. The Customs official in Taiwan (1) conducted interviews, and (2) reviewed translations of payroll receipts and payroll ledger books at the Taichung Detention Facility and at the three screen producing companies involved. The interviews revealed that two of the factories had used workers from the detention facility. These workers were persons awaiting trial or appeal trials. Under Taiwan law, detainees cannot be forced to work but are permitted to volunteer their labor to earn money for a better grade of food and/or to provide income for their families. The workers received at least 80 to 92.5 percent of the wages paid to the detention facility, an amount which approximates simple market labor wages. Taiwan producers stated that due to dumping allegations by U.S. manufacturers, production of wire mesh screens for export to the United States ceased.

On the basis of that information, Customs did not ban entry of the fireplace panels but did not state the reason(s) for the ruling. However, the decision not to enforce section 307 in this case could have been based, at least in part, on the Hendrick rule, since the workers in the detention center were reportedly working on their own volition with adequate financial compensation. In addition, it is unclear if the work performed by the detention center residents fell under the prohibition of section 307, because Customs did not determine if the terms "convict" or "forced labor" would apply to the work of the so-called detainees at the center.

The U.S. International Trade Commission and the U.S. Department of Commerce investigated allegations of dumping and subsidies with respect to imports of fireplace mesh panels from Taiwan in 1981 and 1982. In both instances, the petitioners alleged that convict labor was used in the manufacture of the panels and should be considered in determining the dumping margin and the level of subsidy. In these cases, Commerce did not rule directly on the convict labor issue. In the subsidy case, Commerce ruled that labor from training centers was not used during the period of investigation

(January-June 1982). In the dumping case, Commerce ruled that it does not have the authority to begin an investigation to determine the existence of convict labor and referred the petitioner to the U.S. Customs Service.

Sugar from the Dominican Republic (1982)

This case involved the use of forced labor to harvest sugar in the Dominican Republic. The forced laborers were Haitians, who were captured and allegedly sold to the sugar companies. Customs discussed these allegations with the U.S. Departments of State and Labor. The U.S. Department of Labor informed Customs that the allegations were the subject of an official complaint lodged with the ILO that was scheduled to conduct hearings on this matter in the spring or summer of 1983. In a letter dated December 7, 1982, Customs determined that an investigation in this case was not warranted at that time. However, they would consider the matter further, if necessary, after the ILO issued its findings. According to a Customs employee, there has been no further action in this case and the file is now closed.

The ILO issued its findings on May 6, 1983. 1/ The ILO found that the security forces of the Dominican Republic did engage in supplying to the State sugar plantations Haitians who entered the country illegally. The military took an active role in locating and detaining these illegal Haitians in order to provide labor to the plantation, during certain times of the year. The ILO could not categorically affirm that payments were made to the officials who supplied these Haitians to the plantation, due to a lack of sufficient evidence.

Other cases

Four Customs files concerning license plates from Canada, champagne wire hoods from the Federal Republic of Germany, rondelles from Austria, and hand-woven rugs from Pakistan were closed after investigations disclosed that convict labor had not been used to produce the subject articles.

Three other files contained no statement as to their disposition. These cases involved baskets from the Philippines (1974), carpets from Iran (1974), and shoes from Colombia (1975). No final action is recorded in these files although further information had been requested, but not received.

1/ Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance of certain international Labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic, International Labour Office, Official Bulletin, Special Supplement, vol. 66, 1983.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

OCT 11 1983

MEMORANDUM TO: William von Raab
Commissioner
U.S. Customs Service

FROM: John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

SUBJECT: Withholding of Release of Merchandise from Soviet Union Which May be Produced by Convict, Forced or Indentured Labor

REF: Your Memorandum of September 28 on Identical Subject

Your September 28 memorandum submitted for Departmental approval a proposed Federal Register notice regarding the enforcement of section 307, Tariff Act of 1930 (19 U.S.C. 1307). The notice would inform the public that five (5) days after publication, articles from the Soviet Union which are the product of convict, forced or indentured labor will be withheld from release from Customs custody pending final determination of their status.

Your memorandum recited your preliminary determination that certain articles from the Soviet Union may now be, or are likely to be, imported into the United States and that such articles are being produced with the use of convict, forced, or indentured labor.

As you know from our meeting of October 5, Treasury is seeking from other agencies further clarification of the available information plus any additional probative information which they may produce. This additional information, if any, will assist us in determining the appropriate course of action to be taken in this matter.

Following consultation with the General Counsel of the Department and a review of the past administrative practice of Customs in this area, it is my determination that we should not proceed in this or other section 1307 matters without first articulating a set of standards which describe the legal elements and the quantum, nature and burden of proof that should be required in the exercise of section 1307 authority.

Consequently, please prepare for my review a proposed set of standards for the exercise of section 1307 authority by Customs at both the preliminary and final stage. While those standards must, of course, be applicable in the case at hand, they should also be the standards from which similar section 1307 decisions can be made in the future.

In preparing the standards please keep in mind that in our judgment it is reasonable and appropriate to treat open and closed societies differently in terms of the quantum and nature of evidence required to support each legal element and the burden of proof that may be required. Please note, however, that we do not see how the distinctions between open and closed societies can give rise to differences in the legal elements themselves.

In addition, we believe that in developing the standards you should review the question of whether it is necessary to establish that forced-labor products are in fact reaching the United States or, merely, have the potential of doing so.

With respect to the setting of the standards, you should be directly involved in this process inasmuch as which standards are applied is ultimately a policy and not a legal judgment.

Since time is of the essence, I suggest that Customs' Chief Counsel consult directly with the Assistant General Counsel (Enforcement and Operations) in developing the requested standards. Please provide me with a status report before close of business on Friday, October 14.

cc: Secretary Regan
Deputy Secretary McNamar
Mr. Marc Leland
Mr. Peter Wallison
Mr. David Chew
Mr. Jordan Luke

Legal Elements and Evidentiary Standards for Application of 19 U.S.C. §1307, Prohibiting the Importation of Convict-Made Merchandise

I. The Statute

The operative sentence of section 1307 provides:

> All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, ...

An exception, applicable where domestic U.S. demand is not being satisfied, will be quoted and discussed later.

II. The Procedures

A. The Secretary of the Treasury has substantive authority to make "such regulations as may be necessary for the enforcement of this provision." In the exercise of that authority, he has promulgated regulations defining the procedures the Commissioner of Customs is to follow in enforcing section 1307. See 19 C.F.R. §12.42-.44.

B. On receiving written information sufficient to support a decision and after such investigation as is warranted, id. §12.42(a)-(d), if the Commissioner finds "that information available reasonably but not conclusively indicates that merchandise within the purview of section [1307] is being, or is likely to be, imported, . . . the district directors shall thereupon withhold release of any such merchandise . . . ." Id. §12.42(e).

C. If the Commissioner actually determines "that the merchandise is subject to" section 1307, he is to obtain the approval of the Secretary of the Treasury and publish "a finding to that effect" in the Federal Register and the Customs Bulletin. Id. §12.42(f).

D. Any particular entry of merchandise that is (1) within a "class specified in a finding made under paragraph (f)", and (2) still being detained by Customs at the time of the publication, is to be treated as "an importation prohibited by section [1307]" unless the importer is able to establish "by satisfactory evidence that that particular entry of merchandise was not mined,

produced, or manufactured in any part with the use of a class of labor specified in the finding." Any importer, it appears, my voluntarily export the detained merchandise at any time.

E. Absent voluntary exportation, the Customs Service must hold the merchandise until 3 months after the publication or until 3 months after the attempt to import the merchandise, whichever is later. Up until that time, the importer may bring in evidence to establish that the particular merchandise at issue was not made with the use of a class of labor specified in the finding. Id. §12.42(g).

F. If satisfactory proof has not been submitted within 3 months, Customs is to notify the importer "in writing that the merchandise is excluded from entry". After waiting an additional 60 days to permit the importer to export the merchandise or file an administrative protest under 19 U.S.C. §1514, Customs is to treat the merchandise as abandoned and destroy it.

III. The Legal Elements and Evidentiary Requirements

A. While section 1307 only prohibits the entry of merchandise that actually contains "wholly or in part" components made with prohibited labor, the Secretary has substantive rulemaking power permitting him to detain other merchandise if reasonably necessary to achieve that purpose.

B. The responsibility of the Commissioner (to whom authority to implement the regulations has been delegated) is to make preliminary and (with the approval of the Secretary) final findings concerning whether merchandise is being or is likely to be imported in violation of section 1307. There is no provision granting any importer a right to participate at this stage of the process. In making those findings, under §12.42(e) and (f) of the regulations, both the detailed requirements of §12.42(b) and the protest and judicial review provisions of §12.44 cause us to conclude that the findings must be supported either with (a) a recitation of the evidence and reasons supporting it or (b) the detailed supporting material required to be submitted to the Commissioner under §12.42(b), supplemented with the results of any further investigation he undertakes. This requirement, however, does not require that he reveal classified information and it is expressly contemplated that, should judicial review be sought at any point, the Government should reserve the option of protecting its intelligence sources and methods even at the cost of loss of the litigation. Appropriate unclassified summaries should be substituted to support the findings.

C. 1. Upon receiving information as provided in the regulation, the first step that the Commissioner must take is to define the appropriate class of merchandise. The Commissioner

has the authority to proscribe the entry of "goods, articles or merchandise" through the use of administratively necessary classifications. That is, he is empowered (as a result of his substantive rulemaking authority under section 1307) to define categories of merchandise that are to be detained or excluded despite the fact that a particular class may be somewhat too narrow or too broad to coincide perfectly with the universe of merchandise that was actually produced with convict, forced, and/or indentured labor.

C. 2. In establishing each such class, the Commissioner should use the narrowest classification that he can reasonably establish. That is, by using the most specific Tariff Schedule classification possible, and/or narrowing limitations such as country of origin, manufacturer, or specific physical characteristics, he should seek to avoid prohibiting the entry of any merchandise that is not necessary to the task of excluding the prohibited merchandise. Where possible he should use multiple narrow classifications rather than a single broad one.

D.1. Under the statute and regulations, merchandise is only excludable if it contains "wholly or in part" components made with prohibited labor. That is, the use of tools, factories, energy, or other means that were themselves made with prohibited labor to produce the merchandise will not make the merchandise excludable. In addition, the merchandise is excludable if any part or component is made with prohibited labor, except where the part or component is de minimus. Such a rule would comport with the construction given by the Court of International Trade to the term "in part." It would also permit the Treasury to invoke more easily the 1307 exclusion and shift to the importer and producer the burden of proving that the imported article is not "in part" of the offending component by establishing that the economic contribution of the prohibited labor to the article is de minimus.

D.2. The legislative history of the statute reflects the intent of Congress to protect American industries from foreign competitors who obtain a competitive advantage by using forced labor. Therefore, with respect to any producer in a free market economy for which such information is available, the Commissioner should make a specific finding that the use of forced labor gives that foreign producer a more than de minimus price advantage over American producers. If such information is not available because either the foreign producer or the country in which it is located is unable or unwilling to make such information available or is unreliable because the producer is in a state controlled economy in which costs and prices can be artificially set, then the Commissioner should consider the following in determining whether a competitive advantage resulting from the use of forced labor is more than de minimus:

(a) whether the economy is free market or state controlled;

(b) the nature of the product (whether labor cost is a significant component);

(c) the (apparent) value added by use of forced labor;

(d) the number of parts added or assembled by use of forced labor, relative to the number of parts in the finished product;

(e) the percentage of time required for production of the article which is contributed by forced labor; and/or

(f) any other relevant information available.

E. 1. If the class established is excessively overbroad, that is, if it includes too many articles that are not subject to the statutory prohibition, it cannot be justified under the rulemaking authority of the statute. A de minimus rule -- to the effect that goods will only be excludable under section 1307 if the classification chosen is not too overbroad -- should be developed on a case-by-case basis. In order to ensure that this important limitation is actually considered and applied in each case, the question of the overbreadth of each class should be expressly addressed in quantitative terms in each preliminary and each final finding. This step will help avoid a principal cause of the lack of uniformity in our past findings in this area. This is not to say that unrealistic precision should be artificially imposed on information that will not support it. But quantitative ranges (e.g., between 30 and 50%), rather than vague qualitative terms ("substantial" or "small") are needed, and the best estimate that is possible under the circumstances should be stated in the Commissioner's findings.

E. 2. The determination of the amount of overbreadth to be permitted is a judgment that should be made by the Secretary, or his delegee. So long as the overbreadth in each classification has been quantified to the extent that the available information reasonably permits, case-by-case application of the statute and regulations should lead to the evolution of more consistent standards than our past practice. This approach must permit the use of different quantitative standards where a country or other entity refuses to permit the Commissioner to perform an adequate investigation.

F. In deciding whether to act, the Commissioner must determine whether prohibited merchandise of the class defined "is

being or is likely to be" imported. Although research failed to reveal any case in which this language was invoked absent an actual importation -- with the resulting inference that additional merchandise was likely to be imported -- there is no indication in the statute, regulation or legislative history that such a limitation was intended. It seems fair to interpret the word "likely" in accordance with the dictionary definition "reasonably to be expected," and not to read into it any more stringent standard implying that importation must be more likely than not.

G. 1. The Commissioner must then determine whether the exception in section 1307 for "goods, wares, articles, or merchandise ... not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States" is applicable to any of the classes he has defined. The words "consumptive demand" cannot be read to mean demand at a price influenced or potentially to be influenced by importation of the prohibited merchandise, or the entire statute would be nullified and its purpose not served. Under the circumstances, it seems consistent with the statute only to apply it where there is no possibility of domestic production or what little there is cannot be significantly expanded even at a manyfold increase in price.

G. 2. The exception should use all domestic merchandise that fits within the classification that is selected for the finding (presumably stripping out the country-of-origin and, where applicable, manufacturer limitations), and should also take account of any commercially viable substitutes available in the domestic economy.

Memorandum

☐ ACTION ☐ BRIEFING ☐ INFORMATION

FOR: SECRETARY REGAN DATE: (11)

FROM: Commissioner of Customs William Rael.

SUBJECT: Withholding of Release of Merchandise from the Soviet Union Produced by Convict, Forced, or Indentured Labor

Submitted for your approval is a document prepared for publication in the Federal Register which advises that pursuant to section 307, Tariff Act of 1930 (19 U.S.C. 1307), and in accordance with the procedures in section 12.42, Customs Regulations (19 CFR 12.42), I have concluded that certain classes of merchandise from the Soviet Union either are being, or are likely to be, imported into the United States, which are produced, whether by mining, manufacture, or other means, by convict, forced, or indentured labor. Section 12.42 requires publication of this finding in the Federal Register and the weekly Customs Bulletin.

Upon your concurrence and effective upon publication of the notice in the Federal Register, the release for consumption or withdrawal from warehouse for consumption of the specified articles will be withheld. Customs officers will dispose of such articles in accordance with section 12.44, Customs Regulations (19 CFR 12.44).

This finding is based upon the evidentiary material previously provided to you for review. Accordingly, I recommend that you approve the document as soon as possible.

Approved _____

Disapproved _____

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	SECRETARIAT
SURNAME / OFFICE / CODE						
INITIALS / DATE	/	/	/	/	/	/

OBSOLETE TO F 40-02.1 and

ADM-9-03:CO:R:R:R:mma

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

19 CFR Part 12

(T.D. 84-)

WITHHOLDING OF RELEASE OF MERCHANDISE PRODUCED, MINED, OR MANUFACTURED IN THE SOVIET UNION BY CONVICT, FORCED, OR INDENTURED LABOR

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Withholding of Release of Merchandise.

SUMMARY: This document advises that the Secretary of the Treasury has approved a finding by the Commissioner of Customs that certain classes of merchandise, which either are being or are likely to be imported into the United States from the Soviet Union, are mined, produced, or manufactured wholly or in part by convict or/and forced labor or/and indentured labor under penal sanctions. Because the importation of such merchandise is prohibited by section 307 of the Tariff Act of 1930, the release from Customs custody for importation of any such merchandise is hereby withheld.

DATE: This withholding shall take effect immediately.

FOR FURTHER INFORMATION CONTACT:

John P. Simpson, Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229 (202) 566-2507.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 307, Tariff Act of 1930 (19 U.S.C. 1307), provides, in pertinent part, that "all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision."

"Forced labor" is defined by 19 U.S.C. 1307 to mean "all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily."

The prohibition on importation does not apply, however, to such "goods, wares, articles, or merchandise . . . which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States."

Based upon 19 U.S.C. 1307, section 12.42, Customs Regulations (19 C.F.R. 12.42), sets forth a procedure for the Commissioner of Customs to make a finding that an article is being, or is likely to be, imported into the United States which

is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of 19 U.S.C. 1307.

Paragraph (f) of section 12.42, Customs Regulations, provides that if the Commissioner determines that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported, he will, with the approval of the Secretary of the Treasury, publish a finding to that effect in a weekly issue of the Customs Bulletin and in the Federal Register.

Pursuant to section 12.42, Customs Regulations, the Commissioner has caused an investigation to be made as to whether merchandise is being or is likely to be imported into the United States from the Soviet Union which comes within the purview of 19 U.S.C. 1307. The Commissioner and the Secretary have reviewed the information produced by that investigation, which has now been completed. Based upon that information, the Secretary has approved the publication of the following findings made by the Commissioner.

FINDINGS

Pursuant to section 12.42(f), Customs Regulations, it is hereby determined that certain articles from the Soviet Union are either being, or are likely to be, imported into the United States, which are being produced, whether by mining, manufacture,

or other means, with the use of convict, forced, or indentured labor. It is further determined that such articles are produced in such quantities in the United States as to meet the consumptive demands of the United States.

Accordingly, the release from Customs' custody for consumption or withdrawal from warehouse for consumption of the following articles from the Soviet Union henceforth shall be withheld:

Article	Tariff Schedule Item Number (19 U.S.C. 1202)
TEA	160.50
REFINED OIL PRODUCTS	475.05-475.70
GOLD ORES	601.39
AGRICULTURAL MACHINERY	666.00-666.10
TRACTOR GENERATORS	683.60

Based upon this finding, Customs officers shall withhold release of any of these articles from the Soviet Union pending instructions as to whether they may be released otherwise than for exportation.

This withholding shall remain in force until revoked.

William von Raab.

Approved: Commissioner of Customs

SECRETARY OF THE TREASURY

16 May 1984

The Honorable Donald T. Regan
Secretary of the Treasury
Washington, D. C. 20220

Dear Don:

This letter is written in connection with your statutory responsibilities to prevent the entry into the United States of foreign goods which are produced by convict, forced or indentured labor. We have a good deal of information that the Soviet Union makes extensive use of such labor. We estimate that there are approximately 2 million forced laborers in camps. An additional 2 million or so forced laborers are not confined and are mostly involved in construction.

We have in the past at the request of the Commissioner of Customs furnished information concerning the production of goods with forced labor in the Soviet Union. Although there is convincing evidence that convict and forced labor is used extensively in the Soviet Union, it is fragmentary with respect to specific products. Our information does not enable us to estimate the proportion of total Soviet production of individual products which comes from forced labor. Nor is our information sufficiently precise to allow us to determine whether and to what extent the products of forced labor are exported to the United States.

I am also concerned that the need to make such evidence as we have publicly available, as would almost certainly be necessary for you to carry out your responsibilities, would endanger intelligence sources and methods.

Accordingly, I have to advise you that the Agency's information, while convincing as to the policy and practices of the Soviet Union with respect to forced labor, could not now be provided with sufficient precision to have probative value in a legal proceeding with respect to a particular product. You can be assured that we will continue our work in this area and will keep your Department currently advised if we are able to develop more satisfactory and precise evidence that might be helpful in preventing the entry into the United States of goods produced by convict, forced labor, or indentured labor.

Yours,

William J. Casey

THE SECRETARY OF THE TREASURY
WASHINGTON

May 16, 1984

MEMORANDUM FOR WILLIAM VON RAAB
COMMISSIONER, U.S. CUSTOMS SERVICE

THRU: ASSISTANT SECRETARY WALKER

SUBJECT: Merchandise from the Soviet Union Which May be Produced by Convict, Forced, or Indentured Labor

In light of the evidentiary material previously provided to me for review, I have considered your recommendation that a finding be published pursuant to section 12.42, Customs Regulations, to the effect that certain classes of merchandise from the Soviet Union which are produced by convict, forced, or indentured labor, either are being, or are likely to be, imported into the United States in violation of section 307, Tariff Act of 1930 (19 U.S.C. 1307).

I have carefully considered that evidence, especially in light of a letter I received today from the Director of the Central Intelligence Agency, a copy of which is attached for your information. I have decided that no determination of any kind is warranted at this time. As you are aware, the Senate Finance Committee has directed the International Trade Commission to review this very matter in depth. I think it necessary, given the current paucity of reliable information, to withhold any determination until we have the benefit of the International Trade Commission's study.

In order to facilitate that study, you are hereby directed to issue instructions to Customs district directors to provide you with monthly reports describing the importation of all Soviet goods entered through their respective districts. In turn, until further notice you are to provide the Assistant Secretary (Enforcement & Operations) with a monthly compilation of the district directors' reports, and to provide that information to the International Trade Commission as well.

Donald T. Regan

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

(16) NC

MAY 29 1984

MEMORANDUM FOR: Commissioner William von Raab
U.S. Customs Service

From: John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

Subject: Slave Labor

With reference to a petition signed by various members of Congress relating to the question of whether various goods produced in the Soviet Union should be prevented from entering the United States on the grounds that some or all of such goods may have been made by forced, convict or indentured labor, you are directed to take no action in response to this petition without prior approval of Secretary Regan or myself.